

## **WEST BENGAL VALUE ADDED TAX ACT, 2003**

**37 of 2003**

[ ]

### **CONTENTS**

#### **CHAPTER 1 :- Preliminary**

1. Short title, extent and commencement
2. Definitions

#### **CHAPTER 2 :- Taxing Authorities, Appellate and Revisional Board and Bureau**

3. Commissioner
4. Special Commissioner
5. Additional Commissioner
6. Other persons appointed to assist the Commissioner
7. Appellate and Revisional Board
8. Bureau of Investigation
9. Persons appointed under the Act to be deemed to be public servants

#### **CHAPTER 3 :- Incidence and levy of tax**

10. Incidence of tax
11. Incidence of tax on purchase of raw jute
12. Contingent liability to pay tax on purchase
13. Liability to pay tax on other purchases
14. Liability to pay tax on the transfer of property in goods involved in the execution of works contract
15. Liability of a casual dealer to pay tax. Every casual dealer shall be liable to pay tax
16. Levy of tax on sales
17. Levy of tax on turnover of purchases
18. Levy of tax on contractual transfer price
19. Power of the State Government to fix rates of tax sale of goods specified in Schedule D
20. Power of the State Government to amend Schedules
21. Tax-free sale of goods
22. Input tax credit or rebating of input tax by a registered dealer

#### **CHAPTER 4 :-Registration of dealer, enrolment of transporter, carrier or transporting agent, issue of provisional certificate and demand of security**

23. Bar to carry on business as a dealer without being registered
24. Registration of a dealer
25. Enrolment of transporters, carriers or transporting agents
26. Security to be furnished by the dealer, transporter, carrier or transporting agents in certain cases
27. Amendment of certificate of registration
28. Suspension of certificate of registration
29. Cancellation of certificate of registration
30. Issue of provisional certificate and imposition of penalty for committing fraud or breach of terms and conditions for issuing such certificate

#### **CHAPTER 5 :-Payment of tax, interest, penalty, furnishing of returns, and**

deduction of amount at source towards payment of tax

- 31. Payment of tax
- 32. Furnishing of return
- 33. Interest for non-payment or delayed payment of net tax or amount of tax compounded
- 34. Interest for non-payment or delayed payment of assessed tax
- 35. Exemption from payment of interest
- 36. Interest payable by Commissioner
- 37. Rounding off of tax payable for calculation of interest
- 38. Rounding off of amount of tax or penalty
- 39. Collection of tax only by dealers liable to pay tax
- 40. Deduction at source from payment to a dealer against execution of works contract

**CHAPTER 6 :-**Scrutiny and verification of returns furnished by, and audit of accounts and other documents maintained by, the dealer

- 41. Scrutiny of returns
- 42. Verification of returns
- 43. Audit of accounts
- 44. Credit and debit notes

**CHAPTER 7 :-**Provisional assessment and assessment upon hearing and determination of interest.

- 45. Provisional assessment
- 46. Assessment, imposition of penalty for concealment of turnover after giving notice to the registered dealer
- 47. Assessment as per return
- 48. Assessment of tax payable by dealers other than registered dealers
- 49. Limitation for assessment
- 50. Determination of interest
- 51. Rectification of mistake in determination of interest
- 52. Assessment without prejudice to prosecution for any offence
- 53. Assessment after partition of Hindu undivided family or dissolution of firm and tax payable by a deceased dealer

**CHAPTER 8 :-** Recovery of tax, penalty and interest and refund

- 54. Certain transfers of immovable property by a dealer to be void
- 55. Recovery of tax, penalty and interest, appointment of Tax Recovery Officer, etc
- 56. Tax Recovery Officer to whom certificates to be forwarded
- 57. Amendment of certificates for tax recovery
- 58. Validity of certificates for tax recovery
- 59. Transmission of certificates for tax recovery to Collector in certain cases
- 60. Special mode of recovery of tax, penalty and interest by Commissioner
- 61. Refund to certain class of persons
- 62. Refund of tax etc. paid in excess

**CHAPTER 9 :-** Maintenance of accounts etc. by a dealer

- 63. Maintenance of accounts, records etc
- 64. Compulsory issue of tax invoice, cash memo or bill
- 65. Imposition of penalty for failure to issue tax invoice, cash memo or bill

**CHAPTER 10 :-**Production, inspection, search and seizure of accounts of a dealer or person and sealing of any place, room and almirah etc.

- 66. Production and inspection of accounts, registers and documents
- 67. Seizure of dealers accounts
- 68. Entry and search of place of business or any other place

69. Sealing of any place or almirah etc

**CHAPTER 11 :-**Maintenance of accounts by transporter, carrier or transporting agent and inspection, search and seizure of such accounts.

70. Maintenance of accounts by transporter, carrier or transporting agent and inspection

71. Entry into the place of, and search and seizure of accounts of, a transporter etc

72. Power of the Commissioner to stop delivery of goods and seizure of such goods

**CHAPTER 12 :-**Measures to regulate transport of goods; checkposts; seizure of goods; imposition of penalty; disposal of seized goods

73. Restriction on movement of goods

74. Interception, detention and search of road vehicles and search of warehouse

75. Stock of goods stored in undisclosed warehouse in contravention of section 73

76. Seizure of goods

77. Penalty for transporting goods into West Bengal in contravention of section 73 or section 81

78. Penalty on transporter for contravention of the provisions of sub-section (4) of section 76

79. Penalty for contravention of provisions of section 73 when goods transported are not available

80. Penalty for contravention of provisions of section 73 when goods transported are not available

81. Measures to prevent evasion of tax on sales within West Bengal

82. Exemption from operation of provisions of section 80 and section 81

83. Setting up of checkposts

**CHAPTER 13 :-**Appeal, revision, review, power of taking evidence on oath and reference

84. Appeal against assessment

85. Suo motu revision by Commissioner

86. Revision by Commissioner upon application

87. Revision by Appellate and Revisional Board

88. Review of an order

89. Appeal, review or revision in certain cases

90. Reasonable opportunity to be given to the person likely to be adversely affected

91. Power of taking evidence on oath

92. Reference to the Tribunal

**CHAPTER 14 :-**Offences and penalties, special provision for liability to prosecution and compounding of offences.

93. Offences and penalties

94. Special provision for liability to prosecution

95. Compounding of offences

96. Compounding of penalty that may be imposed under section 106

**CHAPTER 15 :-** Miscellaneous

97. Indemnity of Government servant

98. Returns etc. to be confidential

99. Clearance certificate

100. Power to call for information or statement from bank, post office, railway, etc

101. Statement to be furnished by dealer, transporter, owner or lessee of warehouse

102. Information to be furnished by dealers regarding changes of business

103. Statements, accounts or declarations to be furnished by dealers

104. Additional information to be furnished by dealers

105. Information to be furnished by dealers in respect of transfer of goods

otherwise than by way of sale

106. Penalty for furnishing incorrect information under section 105

107. Transfer of business by registered dealer

108. Partial transfer of business by a registered dealer

109. Bar to proceedings in Civil Court

110. Manner of payment of tax, penalty, interest

111. Power of Commissioner to collect statistics from dealers

112. Power of State Government to prescribe rates of fees

113. Power of State Government to engage any person, firm or company to collect certain Information

114. Power of State Government to make rules

115. Saving in relation to sales outside West Bengal, inter-State sales and sales in course of import or export

116. Deferment of payment of tax in respect of certain industrial units

117. Penalty for contravention or misuse of provisions of section 116

118. Measures for registered dealer holding eligibility certificate under West Bengal Sales Tax Act, 1994

119. Special provisions for waybills, rules, regulations, notifications or orders issued under West Bengal Sales Tax Act, 1994

120. Option to make payment of deferred tax at discounted rate

121. West Bengal Sales Tax Act, 1994 not to apply on commodities governed by the West Bengal Value Added Tax Act, 2003

122. .

123. Amendment of West Bengal Act 49 of 1994

**SCHEDULE 1 :-** SCHEDULE-A

**SCHEDULE 2 :-** SCHEDULE-B

**SCHEDULE 3 :-** SCHEDULE-C

**SCHEDULE 4 :-** SCHEDULE-C

**SCHEDULE 5 :-** SCHEDULE-C

**SCHEDULE 6 :-** SCHEDULE-C

## **WEST BENGAL VALUE ADDED TAX ACT, 2003**

**37 of 2003**

[ ]

An Act to levy tax on sale of goods in West Bengal on the basis of value added to such goods at each stage of sale of such goods and on purchases of certain goods in West Bengal in specified circumstances and to provide for matters connected therewith or incidental thereto] WHEREAS it is expedient to provide for the levy of tax on sale of goods in West Bengal on the basis of value added to such goods at each stage of sale of such goods and on purchases of certain goods in West Bengal in specified circumstances and to provide for matters connected therewith or incidental thereto; It is hereby enacted as follows

### CHAPTER 1

#### Preliminary

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

(1) This Act may be called the West Bengal Value Added Tax Act, 2003.

(2) It extends to the whole of West Bengal.

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

## **2. Definitions :-**

In this Act, unless the context otherwise requires:

(1) "Additional Commissioner" means an Additional Commissioner of Sales Tax appointed under sub-section (1) of section 5;

(2) "Appellate and Revisional Board" means the West Bengal Commercial Taxes Appellate and Revisional Board constituted under section 7;

(3) "appointed day", in relation to any provision of this Act means the date on which such provision comes into force;

(4) "Bureau" means the Bureau of Investigation constituted under section 8;

(5) "Business" includes

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

(b) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, execution of works contract, adventure or concern;

(6) "Capital goods" means-

(a) machine, machinery, plant, equipment, apparatus, tools, appliances or electrical installation used for producing making, extracting or procuring of any goods or for bringing about any change in any substance for the manufacture of final products,

(b) components, spare parts and accessories of such machine, machinery, plant, equipment, apparatus, tools appliances or electrical installation used for the purposes as stated in clause (a),

(c) moulds and dies,

(d) pollution control equipment,

(e) refractory and refractory materials,

(f) storage tank, and

(g) tubes and pipes and fittings thereof, used for the purpose of manufacture of goods;

(7) "casual dealer" means a person who, whether as principal, agent or in any other capacity, has occasional transaction involving buying, selling, supplying or distributing goods in the State, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes, whether he has fixed place of business in West Bengal or not,

(a) a transporter as defined in clause (52) who, while carrying any goods in his goods vehicle as defined in clause (16), fails to disclose the name and address of the consignor or consignee in West Bengal or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, or

(b) an owner or lessee of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy the Commissioner that such goods are for his personal use or consumption, and such transporter, or owner or lessee, shall be deemed to have purchased such goods on his own account:

(8) "Commissioner" means the Commissioner of Sales Tax appointed under sub-section (1) of section 3:

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

(10) "contractual transfer price", in relation to any period, shall mean the aggregate of the amounts received or receivable by a dealer during such period for the transfer of property in goods used by way of accretion or accession in West Bengal in execution of a works contract as defined in clause (57), whether or not the amount received or receivable for such transfer is shown separately in the works contract, and shall comprise the value of such goods purchased, manufactured, processed or procured otherwise, by the dealer and the cost of freight or delivery as may be incurred by such dealer for carrying such goods to the place where such goods are used in execution of such works contract, but shall not include such portion of the amounts as aforesaid as may be prescribed;

(11) "dealer" means any person who carries on the business of selling or purchasing goods in West Bengal or any person making sales under section 14, and includes

(a) an occupier of a Jute-mill or shipper of jute,

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

(c) a co-operative society, club or any association which sells goods to its members,

(d) a factor, a broker, a commission agent, a del credere agent, an auctioneer, an agent for handling or transporting of goods or handling of document of title to goods, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principals;

(12) "digital signature" means authentication of any electronic record by a person by means of an electronic method or procedure in accordance with the provisions of section 3 of the Information Technology Act, 2000;

(13) "director", in relation to a company, includes any person occupying the

position of director, by whatever name called;

(14) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(15) "goods" includes all kinds of movable property other than

(a) actionable claims, stocks, shares or securities,

(b) country liquor,

(c) foreign liquor, whether made in India or not, including brandy, whisky, vodka, gin, rum, liqueur, cordials, bitters and wines, or a mixture thereof, beer, ale, porter, cider, perry, and other similar potable fermented liquors,

(d) lottery tickets

(e) motor spirit having a flashing point below 24.4 degree celsius, required for use as fuel in aircraft,

(f) motor spirit having a flashing point at or above 24.4 degree celsius, required for use as fuel in aircraft,

(g) motor spirit, excluding motor spirit referred to in item(e) and item

(f) having a flashing point at or above 24.4 degree celsius, and

(h) motor spirit of any other kind;

(16) "goods vehicle" means any motor vehicle as defined in clause (28) of section 2 of the Motor Vehicles Act, 1988, constructed or adapted for transportation of goods or any motor vehicle not so constructed or adapted when used for the transportation of goods, and includes a trailer attached to such vehicle and any means of transportation including an animal to carry goods from one point to another point;

(17) "Government" means the Central Government, the Government of any State or the Government of any Union Territory,

(18) "input tax", in relation to any period, means the amount of tax,

(a) separately realised or realisable by a registered dealer from a registered dealer in respect of purchases made by the latter dealer in West Bengal of taxable goods, other than such taxable goods as may be prescribed, required directly in connection with his business, or

(b) paid or payable by a dealer (not being a shipper of jute) under section 11 or section 12 or section 13;

(19) "input tax credit" or "input tax rebate", in relation to any period, means the setting off of the amount of input tax, or part thereof, by a registered dealer against the amount of his output tax;

(20) "interest due" means the amount of interest which remains unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or the rules made thereunder;

(21) "jute-mill" means a factory as defined in, or declared to be a factory under,

the Factories Act, 1948, which is engaged wholly or in part in the manufacture of jute products;

(22) "manufacture", with all its grammatical variations and cognate expressions, means producing, making, extracting or processing any goods and includes printing and raising of natural resources like minerals, coal etc.;

(23) "net tax", in relation to any period, means

(a) in case of a registered dealer, the amount of output tax in excess of the input tax credit claimed by such registered dealer in accordance with the provisions of this Act and the rules made thereunder,

(b) in case of any dealer other than a registered dealer, the amount of output tax;

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

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

(26) "output tax", in relation to any period, means the aggregate amount of tax payable by a dealer liable to pay tax under section 10, section 11, section 12, section 13, sub-section (3) of section 14, or sub-section (3) of section 24, or sub-section (3) of section 30, in respect of any sale, or purchase, of goods made by him in West Bengal;

(27) "partnership" "partner" and "firm" shall have the meanings respectively assigned to them in the Indian Partnership Act, 1932.

(28) "penalty due" means the penalty found to be unpaid after the expiry of the date specified in the notice of demand:

(29) "place of business" means any place where a dealer sells any goods or keeps accounts relating to sales or purchases of goods and includes any place where the dealer processes, produces or manufactures goods and any warehouse of such dealer:

(30) "prescribed" means prescribed by rules made under this Act;

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

(32) "provisional certificate" means the certificate issued to a person under sub-section (1) of section 30;

(33) "provisional dealer" means a person

(a) who is not liable to be registered, or who is not registered, under the Act, and

(b) who intends to set up an industrial unit in West Bengal for manufacture of taxable goods for sale in West Bengal, and

(c) who has been issued a provisional certificate under subsection (1) of section 30;

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

(35) "purchase price" means the amount of valuable consideration paid or payable



by a person for the purchase of any goods, less any sum allowed as cash discount, commission or commercial rebates granted at the time of, or before delivery of, such goods but including cost of freight or delivery or the cost of installation, insurance charges, or any sum charged for anything done by the seller in respect of the goods at the time of, or before, delivery thereof, other than interest, if separately charged;

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

(37) "rules" means the rules made under this Act;

(38) "registered" means registered under section 24;

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

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

(b) any delivery of goods on hire-purchase or any system of payment by instalments,

(c) 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,

(d) any supply, by way of, or as part of, any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration,

(e) any supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration, and such transfer, delivery, or supply of any goods shall be deemed to be a sale of those goods by the person or unincorporated association or body of persons making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery, or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

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

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

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

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

Explanation II. The transfer of property involved in the supply or distribution of goods by a society (including a Co-operative Society), club, firm or any association

to its members for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purpose of this Act;

(40) "sale in West Bengal", when used with respect to a sale made by a dealer includes a sale in the course of inter-State trade or commerce;

(41) "sale price" means the amount payable to a dealer as valuable consideration for the sale, other than the sale referred to in section 14, of any goods and includes

(a) any sum charged for anything done by the dealer in respect of such goods at the time of, or before, delivery of such goods,

(b) any sum charged for delivery, distribution, installation or insurance, by such dealer at the time of, or before, delivery of such goods,

(c) any tax, duty or charges levied or leviable (other than the tax charged separately under this Act and cess levied under the West Bengal Transport Infrastructure Development Fund Act, 2002) in respect of such goods, but does not include any sum allowed as cash discount, commission or other commercial rebate on the value of such goods at the time of, or before, the delivery of such goods.

Explanation For the purpose of this clause, the expression "sale price" shall exclude any tax including the tax referred to in section 12 or section 13 separately realised or realisable from a dealer by another dealer in respect of purchases made by him directly in connection with his business;

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

(43) "Special Commissioner" means a Special Commissioner appointed under sub-section (1) of section 4;

(44) "State Government" means the Government of West Bengal;

(45) "tax" means the tax payable under this Act;

(46) "tax due" means the amount of tax which remains unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or the rules made thereunder;

(47) "taxable goods" means goods other than those specified in Schedule A;

(48) "tax invoice" means an invoice in such form and containing such particulars as may be prescribed;

(49) "tax payable" means tax payable under this Act on sales or purchases effected by a dealer or casual dealer but does not include tax due as defined in clause (46);

(50) "tax period" means such period as may be notified by the State Government in this behalf;

(51) "Tax Recovery Officer" means a Tax Recovery Officer appointed by the State Government under sub-section (4) of section 55;

(52) "transporter, carrier or transporting agent" means a person who carries on the business of transporting goods on account of any other person into, or outside, or within. West Bengal. Explanation. For the purpose of this Act, "transporting agent"

shall also include a clearing and handling agent;

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

(54) "turnover of purchases", in relation to any period, means,

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

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

(c) in case of any dealer liable to pay tax under section 12 or section 13, the aggregate of the purchase prices or parts of purchase prices payable by such dealer in respect of the goods prescribed under that section, purchased by him during such period for use of such goods in West Bengal for the purpose of carrying on his business, after deducting the amounts, if any, refunded to the seller during such period in respect of any such goods purchased but returned to the seller within three months of such purchase;

(55) "turnover of sales", in relation to any period, means the aggregate of the sale-prices or parts of sale-prices received or receivable by a dealer in respect of sales of goods made during such period after deducting therefrom the amounts, if any, refunded by the dealer in respect of any such goods returned or rejected by the purchaser within three months from date of delivery of such goods;

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

(57) "works contract" means any agreement for carrying out for cash, deferred payment or other valuable consideration

(a) the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property,

(b) the installation or repair of any machinery affixed to a building or other immovable property,

(c) the overhaul or repair of

(i) any motor vehicle,

(ii) any sea-going vessel, river craft or steamer,

(iii) any other vessel propelled by internal combustion engine or by any other mechanical means,

(iv) railway engine,

(v) any aircraft, or

(vi) any component or accessory part of any of the goods mentioned in items (i) to (v), or

(d) the fitting of, assembling, altering, ornamenting, finishing, furnishing, improving, processing, treating or adapting any goods;

(58) "year" means the year commencing on the first day of April and ending on the last day of March.

## CHAPTER 2

Taxing Authorities, Appellate and Revisional Board and Bureau

### **3. Commissioner :-**

(1) For carrying out the purposes of this Act, the State Government may appoint a person to be the Commissioner of Sales Tax.

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

(3) The Commissioner may

(a) withdraw to himself from a Special Commissioner, or an Additional Commissioner, or any person appointed under section 6 any case or matter which the Special Commissioner or the Additional Commissioner or such person is competent to deal with in exercise or performance of the powers or duties specified under sub-section (2) of section 4 or sub-section (2) of section 5 or sub-section (2) of section 6 respectively; or

(b) transfer any case or matter from a Special Commissioner competent to deal with the same to another Special Commissioner so competent; or

(c) transfer any case or matter from an Additional Commissioner competent to deal with the same to another Additional Commissioner so competent; or

(d) transfer any case or matter from any person appointed under section 6 competent to deal with the same to another person appointed under that section so competent.

(4) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by an order in writing, delegate any of his powers under this Act except those under sub-section (13) of section 93.

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

### **4. Special Commissioner :-**

(1) The State Government may appoint one or more persons to be the Special Commissioners of Sales Tax.

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

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

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

#### **5. Additional Commissioner :-**

(1) The State Government may appoint one or more persons to be Additional Commissioners of Sales Tax, and such person or persons shall assist the Commissioner.

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

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

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

#### **6. Other persons appointed to assist the Commissioner :-**

(1) The State Government may appoint such other persons to assist the Commissioner as it thinks fit and may specify the area or areas over which such persons shall exercise jurisdiction.

(2) The persons appointed under sub-section (1) shall exercise such powers as may be conferred or prescribed by this Act or delegated to them in writing by the Commissioner under sub-section (4) of section 3.

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

#### **7. Appellate and Revisional Board :-**

(1) The State Government may constitute a West Bengal Sales Tax Appellate and Revisional Board for discharging the functions as referred to in section 87.

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

(3) The qualifications, conditions of service and tenure of the members constituting

the Appellate and Revisional Board shall be such as may be prescribed.

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

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

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

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

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

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

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

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

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

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

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

## **8. Bureau of Investigation :-**

(1) The State Government may constitute a Bureau of Investigation for discharging

the functions referred to in sub-section (3).

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

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

(4) The Bureau may, for the purpose of carrying out any investigation or inquiry under sub-section (3), exercise all the powers under section 66, section 68, section 69, section 70, section 74, section 76, section 78, section 79, section 80 and section 81.

(5) The Commissioner may, on receipt of a report under sub-section (3), require the Bureau to transfer to him any accounts, registers or documents relating to the said report seized by the Bureau and such accounts, registers or documents shall be retained by the Commissioner for further period, if necessary, subject to the provisions of section 67.

(6) The Bureau may, with the prior approval of the Commissioner, require any person appointed under sub-section (1) of section 6 to assist the Commissioner to transfer to it any accounts registers or documents seized by him from any dealer or person under section 67 and, on such transfer, such accounts, registers or documents shall, subject to the provisions of that section, be retained by the Bureau for carrying out the purposes referred to in sub-section (3) and sub-section (7).

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

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

(9) The Bureau shall have for carrying out the purposes of this Act, the same powers as are referred to in section 91.

(10) For the removal of doubts, it is hereby declared that subject to the other provisions of this Act, the Special Officer shall be competent to exercise all the powers which are exercisable under this Act by an Additional Commissioner, and any person appointed under sub-section (1) of section 6 to assist the Commissioner when appointed in the Bureau, shall be competent to exercise all the powers which are exercisable by such person under this Act and the rules made thereunder.

(11) Notwithstanding anything contained in sub-section (1) of section 6, the special Officer and the other persons appointed in the Bureau shall have jurisdiction over the whole of West Bengal.

(12) The Bureau of Investigation constituted under the West Bengal Sales tax Act, 1994, and continuing to have jurisdiction and powers under that Act immediately before the appointed day, shall, on and from the appointed day, be deemed to have

been constituted, and shall have jurisdiction and powers under this Act, and the Special Officer, and other persons appointed under sub-section (1) of section 6 of that Act to assist the Commissioner, appointed in the Bureau of Investigation as aforesaid and continuing in office immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed in the Bureau under this Act and shall continue in office as such till such Special Officer or other person ceases to be appointed in the Bureau.

**9. Persons appointed under the Act to be deemed to be public servants :-**

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

**CHAPTER 3**

Incidence and levy of tax

**10. Incidence of tax :-**

(1) Subject to other provisions of this Act, with effect from the appointed day, every dealer who has been liable immediately before the appointed day to pay tax under the West Bengal Sales Tax Act, 1994, shall be liable to pay tax under this Act on all his sales effected on or after the appointed day.

(2) Every dealer to whom sub-section (1) does not apply, shall be liable to pay tax under this Act,

(a) on all his sales, other than those referred to in section 14, of goods which have been imported by him from any place outside West Bengal; or

(b) on all his sales other than those referred to in section 14, of goods effected on or after the date immediately following the date on which his turnover of sales calculated from the commencement of any year exceeds such taxable quantum as may be prescribed at any time within such year and different taxable quantum may be prescribed for different class of dealers:

Provided that the taxable quantum as may be prescribed under this clause shall not exceed five lakh rupees: Provided further that a dealer who has been registered under sub-section (2) of section 24 on any date prior to the date on which he exceeds the taxable quantum prescribed under this clause shall be liable to pay tax from the date of his registration under that sub-section.

(3) Any dealer who is liable to pay tax under the Central Sales Tax Act, 1956, shall also be liable to pay tax under this Act on all sales and purchases effected by him on and from the date on which he becomes liable to pay tax under that Act.

(4) Notwithstanding anything contained in sub-section (1), or subsection (2), every dealer,

(a) who has become liable to pay tax under clause (a) of sub-section (2) shall continue to be so liable until the expiry of three consecutive years during each of which he has not effected any sale of goods imported by him from outside into West Bengal;

(b) other than the dealer referred to in clause (a), shall continue to be so liable until the expiry of three consecutive years during each of which his turnover of sales has failed to exceed such taxable quantum as referred to in clause (b) of sub-



section (2).

(5) The provisions of sub-section (2) shall apply to every dealer whose liability of pay tax ceases under sub-section (4) as if such dealer has not ever become liable to pay tax under this section.

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

**11. Incidence of tax on purchase of raw jute :-**

Every dealer, being an occupier of a jute-mill or a shipper of jute, shall, in addition to his liability to pay tax, if any, under any other provision of this Act, be liable to pay tax on all his purchases of raw jute in West Bengal.

**12. Contingent liability to pay tax on purchase :-**

Every dealer liable to pay tax under section 10 and registered under sub-section (2) of section 24 shall, in addition to the tax payable under any other provision of this Act, be also liable to pay tax on all his purchases in West Bengal of taxable goods from a dealer who is not registered under this Act for use of such goods in West Bengal for the purpose of carrying on his business, after deducting therefrom such purchases which are shown to the satisfaction of the Commissioner to have taken place in the course of import of goods into, or export of the goods out of, the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956.

**13. Liability to pay tax on other purchases :-**

Every registered dealer who is not liable to pay tax under section 11 and section 12, shall be liable to pay tax on purchase of such goods and in such circumstances, as the State Government may, by notification in the Official Gazette, specify.

**14. Liability to pay tax on the transfer of property in goods involved in the execution of works contract :-**

(1) Notwithstanding anything contained elsewhere in this Act, any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract hereinafter referred to as contractual transfer) in West Bengal shall be deemed to be a sale of those goods by the person making the transfer and a purchase of those goods by the person to whom such transfer is made.

(2) With effect from the appointed day, every dealer, who is liable on the day immediately before the appointed day to pay tax under section 15 of the West Bengal Sales Tax Act, 1994, and who would have continued to be so liable under the said Act had this Act not come into force, shall, in addition to the tax payable, if any, under any other provisions of this Act, be liable to pay tax on all transfers of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18.

(3) Every dealer to whom the provisions of sub-section (2) do not apply and whose contractual transfer price calculated from the commencement of the year ending on the day immediately before the appointed day exceeds two lakh rupees on the last day of such year shall, in addition to the tax, if any, payable by him under any other provisions of this Act, be liable to pay from such appointed day tax on all

transfers of property in goods involved in the execution of works contract referred to in sub-section (1) at the rate specified in section 18:

Provided that where a dealer registered under sub-section (2) of section 24 for his liability to pay tax under section 10 or section 11, shall, notwithstanding that his contractual transfer price does not exceed two lakh rupees, also be liable to pay tax on transfer by him of property in goods involved in the execution of works contract under sub-section (1).

(4) Every dealer to whom the provisions of sub-section (2) or subsection (3) do not apply, shall, if his contractual transfer price calculated from the commencement of the year ending on any day after the appointed day, exceeds two lakh rupees at any time within such year, be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on all transfers of property in goods involved in the execution of works contract at the rate specified in section 18 on and from the date immediately following the day on which such contractual transfer price first exceeds two lakh rupees.

(5) Every dealer who has become liable to pay tax under sub-section (2), sub-section (3) or sub-section (4) shall continue to be so liable until the expiry of three consecutive years during each of which his contractual transfer price does not exceed two lakh rupees, and on the expiry of such three years, his liability to pay such tax shall cease.

Explanation. In computing the period of three consecutive years referred to in this sub-section in respect of a dealer who has become liable to pay tax under sub-section (2) the year or years, if any, which expired before the appointed day and during each of which the contractual transfer price did not exceed two lakh rupees, shall be included.

(6) Every dealer whose liability to pay tax under this section has ceased under sub-section (5) shall, if his contractual transfer price calculated from the commencement of any year again exceeds two lakh rupees at any time within such year, be liable, in addition to the tax, if any, payable by him under any other provisions of this Act, to pay tax on all transfers of property in goods involved in execution of works contract referred to in subsection (1) effected on or from the date immediately following the day on which such contractual transfer price again first exceeds two lakh rupees at the rate specified in section 18.

(7) The Commissioner, after making such enquiry as he may think necessary and after giving the dealer an opportunity of being heard, shall fix the date on and from which such dealer shall become liable to pay tax under sub-section (3), sub-section (4) or sub-section (6).

**15. Liability of a casual dealer to pay tax. Every casual dealer shall be liable to pay tax :-**

(a) on all his sales in West Bengal of goods brought by him from any place outside West Bengal either by way of purchase from a person, or procured by him otherwise, and

(b) on his every purchase of goods in West Bengal.

**16. Levy of tax on sales :-**

(1) Subject to the provisions of sub-section (2), the tax payable by a dealer, who is liable to pay tax under section 10, section 14, clause (b) of sub-section (1) of section 24 or sub-section (3) of section 30 on his turnover of sales, shall be levied on such part of his turnover of sales as remains after deducting therefrom

(a) sales of goods declared tax-free under section 21;

(b) sales of goods which are shown to the satisfaction of the Commissioner not to have taken place in West Bengal, or to have taken place in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, or in the course of import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act;

(c) sales of goods between dealers located in a Special Economic Zone (SEZ);

(d) sales of goods between Export Oriented Units (EOU);

(e) sales of goods between dealers referred to in clause (c) and clause (d);

(f) sales of goods by a dealer to another dealer located in a Special Economic Zone (SEZ), subject to such conditions and restrictions as may be prescribed;

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

(2) The tax payable by a dealer on the turnover of sales as referred to in sub-section (1), shall be levied

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

(b) at the rate, of four per centum of such part of his turnover of sales as represents sales of any goods specified in Schedule C;

(c) at such rate as may be fixed by the State Government under section 19, on such part of his turnover of sales as represents sales of any goods specified in Schedule D.

Explanation. For the purpose of this sub-section, it is hereby declared that the export of the goods out of the territory of India shall be zero rated i.e. the tax paid under this Act shall be refunded or adjusted, as the case may be, against the output tax payable, if any, by a dealer.

(3) Notwithstanding anything contained in sub-section (1) or subsection (2), any registered dealer other than a dealer engaged in execution of works contract as defined in clause (57) of section 2 of the Act, or an importer or a manufacturer having liability to pay tax under this Act, may, at his option, if his turnover of sales in the preceding year does not exceed twenty-five lakh rupees, pay tax at such rate and subject to such conditions and restrictions as may be prescribed, for each quarter of the year in lieu of tax payable under section 10, on all his sales: Provided that such dealer shall not be entitled to issue tax invoice: Provided further that the tax to be prescribed under this subsection shall not exceed twelve per centum of the total turnover of sales of the dealer in the year immediately before the year for which the option has been exercised: Provided also that a registered dealer who, in addition to the purchase of goods in course of his business in a year, have also received goods from the supplier within or outside West Bengal, not on branch transfer or on consignment basis,, for which no price has been paid, shall

not be entitled to opt for payment of tax under this sub-section.

(4) Notwithstanding anything contained in sub-section (1) of section 18, any registered dealer, who is liable to pay tax under section 14, may, at his option, pay tax at such rate not exceeding five per centum of the aggregate of the amount received or receivable by such dealer and subject to such conditions and restrictions as may be prescribed, for each quarter of the year in lieu of the amount of tax payable by him under section 18: Provided that such dealer shall not be entitled to issue tax invoice.

(5) Any registered dealer who intends to opt for payment under subsection (3) or sub-section (4) of this section shall exercise his option by making an application to the Commissioner in such manner as may be prescribed.

**17. Levy of tax on turnover of purchases :-**

The tax payable by a dealer, who is liable to pay tax on his turnover of purchases under section 11 or section 12, shall be levied

(a) at the rate of two per centum of such part of the turnover of purchases as represents purchases of raw jute under section 11; or

(b) at the rate of tax as applicable to a sale of such goods under sub-section (2) of section 16 on such part of the turnover of purchases as represents purchases in West Bengal under section 12.

**18. Levy of tax on contractual transfer price :-**

(1) The tax payable by a dealer, who is liable to pay tax under section 14, shall be levied at the rate of twelve decimal five zero per centum of such part of the contractual transfer price of goods during any period which remains after deducting therefrom his contractual transfer price during that period on

(a) contractual transfer of goods, sales of which are declared tax- free under section 21;

(b) such other contractual transfers as may be prescribed.

(2) Where a dealer enters into a contract with, and engages, another dealer for execution of a works contract, whether in part or in full, the contractual transfer price relating to the execution of such works contract executed by the other dealer shall, subject to the production of the proof of payment of tax by that other dealer, be deducted from the contractual transfer price of the dealer who engages the other dealer for execution of the works contract.

**19. Power of the State Government to fix rates of tax sale of goods specified in Schedule D :-**

The State Government may, by notification, fix the rate of tax, with prospective or retrospective effect, not exceeding thirty per centum of the turnover of sales of goods specified in Schedule D, and different rates may be fixed for different items of such goods.

**20. Power of the State Government to amend Schedules :-**

The State Government, after giving by notification not less than fourteen days' notice of its intention so to do, may, by like notification, with prospective or retrospective effect, add to, amend, or alter any Schedule to this Act other than Schedule A.

**21. Tax-free sale of goods :-**

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

**22. Input tax credit or rebating of input tax by a registered dealer :-**

(1) Subject to such conditions and restrictions as may be prescribed, every registered dealer other than a shipper of jute, shall be entitled to claim an input tax credit of his input tax against his output tax in such manner as may be prescribed.

(2) The input tax credit as mentioned in sub-section (1), shall be the amount of tax paid or payable by the registered dealer at the time of purchasing the taxable goods (hereinafter referred to as the "purchasing dealer"), to the seller who is a registered dealer, on the turnover of purchases made by the purchasing dealer during the tax period subject to the provisions contained in subsections (3) to (9) and sub-section (15): Provided that subject to such conditions and restrictions and in the manner as may be prescribed, a registered dealer other than a shipper of jute, will get input tax credit for the goods other than capital goods, lying in stock with the dealer on the date of his incurring liability to pay tax under this Act when the dealer has proved to the satisfaction of Commissioner that such goods were purchased on or after a date specified for such purchase.

(3) The purchasing dealer availing of the input tax credit shall maintain the books and the books of accounts in the manner as may be prescribed.

(4) The input tax credit shall be allowed to the extent of the amount of tax paid or payable by the purchasing dealer on his purchase of taxable goods made in the State from a registered dealer holding a certificate of registration and such goods are purchased for the purpose of

(a) sale or resale by him in West Bengal; or

(b) sale in the course of inter-State trade and commerce; or

(c) use as containers or material for packing of taxable goods intended for sale in the State or sale in the course of inter-State trade or commerce; or

(d) use as raw materials, capital goods and consumable stores required for the purpose of manufacture of taxable goods intended for sale in the State or in the course of inter-State trade and commerce or in the packing of goods so manufactured; or

(e) execution of works contract; or

(f) use as raw materials, capital goods and consumable stores required for the purpose of manufacture of goods to be sold in the course of export under section 5 of the Central Sales Tax Act, 1956, and packing materials and containers used for packing such goods:

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

(5) The input tax credit shall not be claimed by the purchasing dealer until he receives from the registered dealer from whom he has purchased the goods,

original tax invoice in the prescribed manner evidencing the amount of tax.

(6) Notwithstanding anything contained in this Act, no input tax credit shall be allowed for purchases

(a) made from the registered dealer who has been allowed to pay tax at a rate under sub-section (3) or sub-section (4) of section 16; or

(b) made in the course of inter-State trade and commerce; or

(c) made in the course of import from outside the country; or

(d) of the taxable goods which are disposed of otherwise than by way of sale, or used as raw materials in manufacture of goods which are disposed of otherwise than by way of sale as mentioned in sub-section (8); or

(e) of the taxable goods which are used in manufacture of goods specified in the Schedule A or in the packing of goods so manufactured and not sold in the course of export; or

(f) of the taxable goods which remain unsold as stock of goods at the time of closure of business; or

(g) of the taxable goods in respect of which the original tax invoice has been issued by a registered dealer from whom purchasing dealer has purchased such goods, without specifying the details of tax charged on such goods separately; or

(h) of the taxable goods in respect of which the original tax invoice has not been issued by the registered dealer to the purchasing dealer or the same is not available to the purchasing dealer, subject to such conditions and restrictions as may be prescribed.

(7) A registered dealer shall not be entitled to input tax credit in respect of the purchases of the following taxable goods:

(a) air-conditioning units, air coolers, fans and air circulators unless the registered dealer is in the business of dealing in such goods;

(b) all automobiles including commercial vehicles, and two and three wheelers, and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts;

(c) crude oil unless the registered dealer is in the business of dealing in such products;

(d) food, beverages and tobacco products, unless the registered dealer is in the business of providing such food, beverages and tobacco products;

(e) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees including any residential accommodation;

(f) goods used for personal consumption or gifts;

(g) such goods or classes of goods as may be prescribed.

(8) Where the turnover of purchases of taxable goods

(a) used or despatched for stock transfer outside the State otherwise than by way of sale; or

(b) used as raw materials in manufacture, or in the packing of goods so manufactured, which are despatched outside the State otherwise than by way of sale, a registered dealer shall not be entitled to input tax credit unless the amount of tax on such turnover of purchases exceeds the amount calculated at the rate of four per centum or applicable rate of tax, whichever is lower, and the amount of input tax credit shall be calculated at such rate which exceeds four per centum or applicable rate of tax, as the case may be:

Provided that where a registered dealer has already enjoyed input tax credit at the full rate, his input tax credit shall be reversed to the extent to which he is not eligible in such manner as may be prescribed.

(9) The State Government may, by notification, specify any class of dealers that shall not be entitled to full or partial input tax credit.

(10) Where a registered dealer without entering into a transaction of sale, issues to another registered dealer tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the Government revenue, the Commissioner may, after making such inquiry as he thinks fit and after giving the registered dealer a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer issuing or accepting such tax invoice, retail invoice, bill or cash memorandum, either prospectively or retrospectively, from such date as he may deem fit and proper.

(11) If the taxable goods are purchased for the purposes specified in sub-section (4) and are used fully or partly for purposes other than those specified in that sub-section, or are used fully or partly in the circumstances described in sub-section (8), the input tax credit; if availed of, shall be reduced on account of such use from the net tax credit being claimed for the tax period during which such use has taken place and such reduction shall be done in the manner as may be prescribed.

(12) The net tax credit shall be determined in the following manner, namely:- Net tax credit = A + B - C Where "A" represents the amount of input tax credit which the dealer is entitled to under sub-section (1) subject to other provisions of this section; "B" represents outstanding input tax credit brought forward as determined from the previous tax period; "C" represents reverse tax credit as determined under the proviso to sub-section (8) or sub-section (11).

(13) Where any purchaser, being a registered dealer, has been issued with a credit note or debit note in terms of section 44 or if he returns or rejects goods purchased, as a consequence of which the input tax credit, availed by him in any period in respect of which the purchase of goods relates, becomes either short or excess, he shall compensate such short or excess by adjusting the amount of input tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned, subject to such conditions as may be prescribed.

(14) The methods that are used by a registered dealer in a year to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied in the manner specified in sub-section (1) shall be fair and reasonable:

Provided that the Commissioner may, after giving the registered dealer an opportunity of being heard and for the reasons to be recorded in writing, reject the

method adopted by the registered dealer and calculate the amount of input tax credit.

(15) Notwithstanding anything contained elsewhere in the Act, when a dealer enjoying deferment of payment of tax under sub-section (1) of section 97 or under clause (a), or clause (b), or clause (c) of section 118, purchases taxable goods from within West Bengal, which are used as raw materials in manufacture of taxable goods or in the packing of goods so manufactured, or capital goods, he shall not be entitled to input tax credit during the period of such enjoyment which shall be accumulated and carried forward until the expiry of such period of deferment:

Provided that such dealer shall be entitled to input tax credit in respect of such purchases of taxable goods within West Bengal, output tax on sale in West Bengal of which, cannot be deferred: Provided further that such dealer shall be entitled to refund of input tax credit in respect of such purchases of taxable goods within West Bengal, where the goods manufactured by using such goods have been exported out of the territory of India.

(16) In no circumstances, any registered dealer including the commission agent shall be permitted to transfer his input tax credit to any other registered dealer or, as the case may be, the principal officer.

(17)

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

(b) Such auctioneer or broker-member shall not be entitled to get any input tax credit.

#### CHAPTER 4

Registration of dealer, enrolment of transporter, carrier or transporting agent, issue of provisional certificate and demand of security

### **23. Bar to carry on business as a dealer without being registered :-**

(1) No dealer who has become liable to pay tax under section 10, or section 11, or section 14 or sub-section (3) of section 30, shall carry on business as a dealer unless he gets himself registered:

Provided that the provisions of this sub-section shall be deemed not to have been contravened, if the dealer having applied, within the prescribed time as specified in sub-section (2), for such registration, is engaged in such business, and where such application has not been disposed of.

(2) A dealer referred to in sub-section (1) shall, within thirty days from the date from which he has become liable to pay tax under section 10, or section 11, or section 14, or sub-section (3) of section 30, make an application for registration to



the Commissioner in the manner provided in sub-section (1) of section 24:

Provided that a dealer who has become liable to pay tax under section 10, or section 11, or section 14, or sub-section (3) of section 30, and who is registered under the West Bengal Sales Tax Act, 1994, on the day immediately preceding the appointed day, shall, subject to the provisions of section 24, be deemed to have been registered under the Act.

(3) Where any dealer who has been registered on any day before the appointed day and continues to be so registered on the day immediately before such appointed day under the West Bengal Sales Tax Act, 1994, and is liable to pay tax under this Act on such appointed day, the prescribed authority shall issue to such dealer a certificate of registration under this Act in such manner as may be prescribed.

(4) If a dealer who is required by sub-section (1) to get himself registered, fails without any reasonable cause to make an application for registration within the time allowed under sub-section (2), the Commissioner may, after giving the dealer an opportunity of being heard in the manner as may be prescribed by an order in writing, impose upon such dealer by way of penalty a sum not exceeding ten thousand rupees for each month of default:

Provided that no penalty shall be imposed under this sub-section in respect of the same fact for which a prosecution has been initiated under section 93 and no prosecution shall lie in respect of a fact for which a penalty has been imposed under this section.

#### **24. Registration of a dealer :-**

(1) Every dealer

(a) who is required by section 23 to be registered, shall, or

(b) who is not required by section 23 to be registered but intends to be registered at any time after his turnover of sales during a year exceeds such taxable quantum as may be prescribed, may, make an application for registration in the prescribed manner to the prescribed authority and such application shall be accompanied by a declaration in the prescribed form duly filled up and signed by the dealer making the application.

(2) If the prescribed authority is satisfied that the application for registration is in order, he shall, in such manner and within such time as may be prescribed, register the applicant and shall grant him a certificate of registration in the prescribed form from such date as may be prescribed.

(3) Any dealer who has been registered under sub-section (2) for his liability to pay tax under clause (b) of sub-section (2) of section 10, or section 11, or who has been registered on an application made by him under clause (b) of sub-section (1) of section 24, shall be liable to pay tax on all sales of goods effected by him from the date from which his registration certificate is granted even where such dealer does not exceed the prescribed taxable quantum in respect of such sales.

#### **25. Enrolment of transporters, carriers or transporting agents :-**

For carrying out the purposes of section 73, section 80, section 81, every transporter, carrier or transporting agent operating his transporting business in

West Bengal of transporting any consignment of taxable goods into, or outside, or within, West Bengal shall obtain from the Commissioner a certificate of enrolment in such manner, and within such time, as may be prescribed.

Explanation. For the purposes of this section or section 70, the expression "taxable goods" shall mean all goods excluding those goods sales of which are tax-free under section 21.

**26. Security to be furnished by the dealer, transporter, carrier or transporting agents in certain cases :-**

The Commissioner may, by an order in writing, for good and sufficient reason to be recorded therein, demand from any dealer, transporter, carrier, transporting agent, a security in such circumstances and in such manner as may be prescribed.

**27. Amendment of certificate of registration :-**

The prescribed authority may from time to time amend any certificate of registration in accordance with information furnished under section 102 or otherwise received, after due notice to the dealer and such amendment may be made with retrospective effect in such circumstances, and subject to such restrictions and conditions, as may be prescribed.

**28. Suspension of certificate of registration :-**

(1) Where any registered dealer has failed, without sufficient cause, to pay any tax, penalty or interest payable under this Act or has failed to furnish a return referred to in section 32, the appropriate authority may, after giving such dealer a reasonable opportunity of being heard and for reasons to be recorded in writing, suspend the certificate of registration of such dealer.

(2) Where a dealer, after suspension of his certificate of registration under sub-section (1), pays in full the amount of tax, penalty or interest payable by him under this Act, or furnishes the return referred to in that sub-section, for default of which his certificate of registration has been suspended under that sub-section, and makes an application to the Commissioner for withdrawal of such suspension of his certificate of registration together with receipted challan evidencing payment of such tax, penalty and interest, or together with a copy of the receipt evidencing furnishing of such return, as the case may be, within thirty days from the date of such suspension or within such further time as may be allowed, the Commissioner shall, by an order in writing, withdraw the suspension.

(3) Any certificate of registration which has been suspended under sub-section (1) may, upon an application by the dealer whose certificate of registration has been so suspended, be registered by the Commissioner, by an order passed in writing; if the Commissioner is satisfied that the dealer has, within thirty days from the date of suspension, or within such further time as may be allowed by the Commissioner, for reasons shown,

(a) paid the tax, penalty or interest for non-payment of which, or

(b) furnished the return for non-furnishing of which, his certificate of registration has been suspended under subsection (1).

(4) Every order passed under sub-section (2) shall be effective from the date from which the order passed under sub-section (1) had taken effect.

(5) Where the certificate of registration of a dealer has been suspended under sub-section (1); such dealer shall not be entitled to any input tax credit unless the certificate of registration so suspended is withdrawn under sub-section (2).

**29. Cancellation of certificate of registration :-**

(1) A certificate of registration granted to a dealer under sub-section (2) of section 24 shall be cancelled by the appropriate authority where such authority, after giving a reasonable opportunity to such dealer of being heard, is satisfied that

(a) the dealer has ceased to carry on business or has ceased to exist, or

(b) the dealer has ceased to be liable to pay tax under sub-section (3) of section 10, or

(c) the dealer, after suspension of his certificate of registration under sub-section (1) of section 28, has failed or neglected to pay the tax, penalty or interest for non-payment of which, or has so failed to furnish the return for non-furnishing of which, his certificate of registration has been suspended under that section.

(2) The cancellation of registration may be made on an application of the dealer or suo motu on the satisfaction of the appropriate authority.

(3) The cancellation of registration shall take effect from the end of British calendar month in which the registration is cancelled unless the appropriate authority orders the cancellation to take effect on an earlier date.

**30. Issue of provisional certificate and imposition of penalty for committing fraud or breach of terms and conditions for issuing such certificate :-**

(1) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, on an application made by a person who is not liable to pay tax under this Act and who intends to set up an industrial unit in West Bengal for manufacture of taxable goods for sale in West Bengal, grant to such person a provisional certificate: Provided that the Commissioner shall not grant provisional certificate to a person who is liable to be registered, or who is registered under the Act.

(2) A provisional certificate issued to a provisional dealer under subsection (1) shall be valid from the date of its issue and shall remain in force up to such period and in such manner, as may be prescribed, or till the day on which his turnover of sales of goods manufactured by him in his industrial unit exceeds the taxable quantum specified in sub-section (3), whichever is earlier.

(3) Subject to the provisions of section 10, section 11, or sub-section (3) of section 24, every dealer, being a provisional dealer, shall be liable to pay tax on all sales of goods effected by him on or after the expiry of sixty days from the date on which his turnover of sales of goods manufactured by him in his industrial unit exceeds twenty five thousand rupees during any year calculated from the commencement of such year.

(4) A person who has been issued a provisional certificate under sub-section (1) shall furnish periodical statements to the Commissioner in the manner which may be prescribed.

(5) Any person who has committed any breach of the terms and conditions under which a provisional certificate has been issued under sub-section (2) or renewed or availing or attempting to avail the benefit of certificate in respect of purchases of goods not specified in the certificate or after the validity of the certificate has expired, shall be punishable with a penalty not exceeding one thousand rupees and if the offence is a continuing one with a daily fine not exceeding five hundred rupees during the continuance of the offence. All offence punishable under this sub-section shall be cognizable and bailable, and no court inferior to that of a Judicial Magistrate of the First Class or Metropolitan Magistrate, shall try such offence.

#### CHAPTER 5

Payment of tax, interest, penalty, furnishing of returns, and deduction of amount at source towards payment of tax

### **31. Payment of tax :-**

Any amount

(a) of net tax payable according to a return referred to in sub-section (1) of section 32, or

(b) of the interest payable under section 33 or section 34, or

(c) of tax payable after assessment under section 45, or section 46, or section 48, or

(d) of penalty imposed under any provisions of this Act, or

(e) other than those referred to in clause (a), clause (b), clause (c), or clause (d), payable under this Act, shall be paid into a Government Treasury or the Reserve Bank of India in such manner, at such interval, within such time, as may be prescribed.

### **32. Furnishing of return :-**

(1) Every registered dealer, or every other dealer, if so, required by the Commissioner by a notice served in the prescribed manner, shall furnish such returns by such dates and to such authority as may be prescribed.

(2) Every dealer required by sub-section (1) to furnish a return shall, before furnishing such return, pay the full amount of the net tax payable according to such return in the manner provided in section 31 and shall furnish along with such return a receipt from the Treasury or the Bank referred to in that section showing the payment of such amount:

Provided that where a dealer required by sub-section (1) to furnish return for any period is unable to make payment of the full amount of the net tax payable according to such return, shall furnish the return without making payment of the full amount of the net tax payable according to such return along with an application adducing reasons to the Commissioner for extension of time for making payment of the unpaid amount of such net tax and interest payable thereon up to the extended date of payment:

(3) If any dealer who has furnished a return under sub-section (1), discovers any omission or any other error in any return furnished by him, he may, at any time before the date prescribed for the furnishing of the next return by him, furnish a revised return; and if the revised return shows a greater amount of tax to be due

than what was shown in the original return, it shall be accompanied by a receipt showing payment of the extra amount in the manner provided in section 31.

(4) Where a deduction of an amount is made under sub-section (1) of section 40 from the payment of any sum to a dealer for execution of a works contract, and such amount is deposited under sub-section (2) of that section, the deduction of such amount shall be deemed to be a payment of tax by such dealer made by him on the date of such deduction, and he shall furnish along with his return required under sub-section (1) of this section, in respect of such amount a copy of the certificate of deduction referred to in sub-section (3) of section 40, duly certified by such dealer, as proof of such payment of tax: Provided that where a dealer does not receive a certificate of deduction under sub-section (3) of section 40 on or before the prescribed date of furnishing of return for a return period he shall furnish the return stating the fact in writing, and he shall undertake to furnish the copy of such certificate of deduction within fifteen days from issue of such certificate to him under sub-section (3) of section 40.

(5) A dealer liable to furnish return under the West Bengal Sales Tax Act, 1994, immediately before the appointed day, shall, notwithstanding that a period, in respect of which he is so liable to furnish return, commences on any day before such appointed day and ends on any day after such appointed day, furnish return in respect of the rest of the return period starting on or immediately after such appointed day and pay tax in accordance with the provisions of this Act.

### **33. Interest for non-payment or delayed payment of net tax or amount of tax compounded :-**

(1) Where a dealer required to furnish return under sub-section (1) of section 32, furnishes such return in respect of any period by the prescribed date or thereafter, but fails to make full payment of the net tax payable under sub-section (2) of that section in respect of such period by the prescribed date, he shall pay a simple interest at the rate of twelve per centum per annum for the period commencing on the date of expiry of the prescribed date and ending on the date of payment of the amount of tax or up to the date prior to the date of assessment under section 46 or section 47, as the case may be, in respect of such period, whichever is earlier, upon so much of the amount of net tax payable by him according to such return as remains unpaid:

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

(2) Where a dealer required to furnish return under sub-section (1) of section 32, fails to furnish such return in respect of any period by the prescribed date or thereafter before the assessment under section 46 or section 47, as the case may be, in respect of such period, and on such assessment full amount of net tax payable for such period is found not to have been paid by him by such prescribed date, he shall pay a simple interest at the rate of twelve per centum per annum for the period commencing on the date of expiry of the prescribed date and ending on the date of assessment under section 46 or section 47 upon so much of the amount

of net tax payable by him according to such assessment as remains unpaid:

Provided that where an assessment under section 46 or section 47 is made for more than one period and such assessment does not show separately the net tax payable for the period in respect of which interest is payable under this sub-section, the Commissioner shall apportion the net tax payable for such period on the basis of such assessment.

(3) Where a dealer required to reverse input tax credit in a particular tax period under the proviso to sub-section (8) or sub-section (11) of section 22, fails to do so, he shall have to pay a simple interest at the rate of twelve per centum per annum for the period commencing on the first day of the next tax period and ending on the last date of the tax period preceding the tax period in which such reversal is actually made, on the additional amount of net tax payable, if the reversal were duly made as per provisions of this Act and rules made thereunder.

(4) Where a dealer fails to make payment of the amount of tax compounded under sub-section (3) or sub-section (4) of section 16 by the date specified in the notice issued thereunder, he shall pay a simple interest at the rate of twelve per centum per annum for the period commencing on the date of expiry of the date so specified and ending on the date of full payment of such tax or up to the date of commencement of proceedings under section 55, whichever is earlier upon so much of the amount of tax payable by him according to such notice as remains unpaid.

#### **34. Interest for non-payment or delayed payment of assessed tax :-**

(1) Where a dealer fails to make payment of any tax payable after assessment by the date specified in the notice issued under section 45 or section 46 or section 47 for payment thereof, he shall, subject to the provisions of sub-section (2) pay a simple interest at the rate of twelve per-centum per annum for the period of default, calculated from the day next following the date specified in such notice up to the day of full payment of such tax or up to the day preceding the day of commencement of proceedings under section 55, whichever is earlier upon so much of the amount of tax payable by him according to such notice as remains unpaid.

(2) Where as a result of an order under section 84, section 85, section 86, section 87 or section 88 the amount of tax payable is modified, the interest payable under sub-section (1) shall be determined or re-determined on the basis of such modified amount and the excess interest paid, if any, shall be refunded.

#### **35. Exemption from payment of interest :-**

Notwithstanding anything antained in section 33 or section 34, no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as may be prescribed.

#### **36. Interest payable by Commissioner :-**

The Commissioner shall, in the prescribed manner, pay a simple interest at the rate of twelve per centum per annum for the period of delay in making refund to certain class of persons referred to in section 61, or to a dealer of the amount of tax paid in excess which arises out of an order passed under section 84, section 85, section 86, section 87 or section 88, from the first day of the month next following the date of such order up to the date on which the refund is made in the manner referred to in section 62, upon the amount of tax refundable to him according to such order.

**37. Rounding off of tax payable for calculation of interest :-**

In calculating the interest payable under section 33, section 34 or section 36; the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and if such part is less than fifty rupees, it shall be ignored.

**38. Rounding off of amount of tax or penalty :-**

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

**39. Collection of tax only by dealers liable to pay tax :-**

(1) No dealer who is not liable to pay tax under this Act shall collect, in respect of any sale of goods by him, any amount of tax under this Act and no dealer who is liable to pay tax under this Act, shall make any such collection except in accordance with the provisions of this Act:

Provided that the dealer can reimburse the amount of tax paid under this Act at the time of purchase of goods taxable under this Act.

(2) If any dealer contravenes the provisions of sub-section (1), he shall, notwithstanding anything contained elsewhere in this Act, deposit the amount collected in such contravention into a Government Treasury or the Reserve Bank of India within thirty days from the date of such collection and intimate the Commissioner of such deposit along with a receipt from such Treasury or Bank showing payment of such amount.

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

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

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

**40. Deduction at source from payment to a dealer against execution of works contract :-**

(1) Notwithstanding anything contained in section 32 or any rules made thereunder or any terms of a contract to the contrary, any person responsible for paying any

sum to any dealer for execution of a works contract referred to in section 14, wholly or partly in pursuance of a contract between such dealer and

(a) Government,

(b) a local authority,

(c) a corporation or a body established by or under any law for the time being in force,

(d) a company incorporated under the Companies Act, 1956, including a Government undertaking,

(e) a co-operative society registered or deemed to be registered under the West Bengal Co-operative Societies Act, 1983,

(f) an educational institution, or

(g) a promoter, shall, at the time of payment of such sum in cash or by issue of a cheque or draft or any other mode of payment, deduct an amount towards tax equal to two per centum of such sum being paid in respect of such works contract: Provided that no deduction under this sub-section shall be made,-

(i) where the payment is made as advance prior to the commencement of the execution of such works contract; or

(ii) where no transfer of property in goods (whether as goods or in some other form) is involved in the execution of such works contract; or

(iii) where the dealer produces a certificate from the Commissioner under section 99 that he has no liability to pay tax under section 14 or that he has paid tax payable by, or due from, him under that section: Provided further that no deduction under this sub-section shall be made in respect of that part of payment to a dealer which represents his contractual transfer price of the goods as referred to in clause (a) of sub-section (1) of section 18, where such dealer declares in writing to that effect claiming exemption from tax. Explanation.-For the purposes of this sub-section, "promoter" means a person who constructs reconstructs, converts, renovates or extends or causes to be constructed, reconstructed, converted, renovated or extended, a building including a flat or apartment or a block of flats or apartments or a resort) on a plot of land for the purposes of transfer of such building by sale or otherwise to any person or to a company, firm, co-operative society or any association of persons, and includes-

(i) his assignee, if any

(ii) the person who develops or reclaims the land, the person who constructs, reconstructs, converts, renovates or extends, and the person who transfers, such building, if such persons are different,

(iii) a society registered under the West Bengal Societies Registration Act, 1961,

(iv) any firm, board or other association of persons established by or under any law for the time being in force, but excluding those referred to in clauses (a) to (f) of this sub-section.

(2) Where deduction of an amount is made under sub-section (1),-

(a) the person making such deduction shall deposit the amount so deducted into a



Government Treasury or Reserve Bank of India within such time, in such manner and in such form or challan as may be prescribed; or

(b) in the case of a person who adopts "public works system of accounting" and makes such deduction, he shall transfer the amount so deducted to the appropriate head of account through account statement in the manner prescribed, which is required to be sent periodically to the Accountant General, West Bengal, and such transfer shall be deemed to be a deposit of the amount so deducted by the person making such deduction on the basis of such statement.

(3) After the deposit of the amount under sub-section (2), the person who makes the deduction and deposit, shall, within fifteen days from the date of such deposit, issue to the dealer a certificate in the prescribed form for each deduction separately and send a copy of receipted challan or a copy of the account statement referred to in sub-section (2), as the case may be, to the Commissioner along with the relevant certificate of deduction and such document as may be prescribed.

(4) On receipt of a certificate of deduction referred to in sub-section (3), the deposit of an amount of a dealer referred to in sub-section (2), shall be adjusted by the Commissioner towards tax liability of the dealer under section 18, and shall constitute a good and sufficient discharge of the liability of the person deducting such amount to the dealer to the extent of the amount deducted and deposited.

(5) Where any person, while paying any sum to a dealer, contravenes the provisions of sub-section (1), sub-section (2) or sub-section (3), he shall be personally liable for such contravention, and the Commissioner may, after giving him an opportunity of being heard, by order in writing and in such manner as may be prescribed, impose on such person a penalty, not exceeding twice the amount required to be deducted and deposited by him into the Government Treasury or the Reserve Bank of India.

(6) Where the dealer from whose account any amount has been deducted under sub-section (1) and deposited under sub-section (2) proves to the satisfaction of the Commissioner that he is not liable to pay tax under section 14 and such amount was not wholly or partly payable by him under this Act, the Commissioner shall refund or adjust the amount refundable to the dealer in such manner as may be prescribed.

#### CHAPTER 6

Scrutiny and verification of returns furnished by, and audit of accounts and other documents maintained by, the dealer

### **41. Scrutiny of returns :-**

(1) Every return, furnished under subsection (1) of section 32, shall be scrutinized by the Commissioner to ascertain the correctness of calculation of net tax payable according to such return and the payment of interest payable under sub-section (1) of section 33, if any.

(2) If any mistake is detected upon the scrutiny made under subsection (1), the Commissioner shall, in the prescribed manner, serve upon the dealer who has filed such return, a notice requiring him to pay the amount xif net tax in deficit along with the interest payable under sub-section (1) of section 33, if any, within the date specified in such notice.

(3) The notice referred to in sub-section (2) shall not be issued to any dealer after the expiry of four months from the day on which a return has been furnished under sub-section (1) of section 32.

(4) If upon scrutiny made under sub-section (1), a dealer is found to have paid tax or interest in excess of the amount payable as per such return, the Commissioner shall, inform the same to the dealer within one month from the date of completion of such scrutiny.

#### **42. Verification of returns :-**

(1) Where the Commissioner, for reasons to be recorded in writing, has reason to believe that a dealer has furnished incorrect statement of his turnover of purchases or turnover of sales or incorrect particulars of his purchases or sales in any return furnished by such dealer under sub-section (1) of section 32, he may verify the statement and particulars furnished in such return with reference to the accounts, registers or documents maintained or kept by such dealer.

(2) If upon verification of return made under sub-section (1), the Commissioner is not satisfied that the returns furnished by a registered dealer are correct and complete, he shall proceed to make assessment of the dealer as prescribed in section 46.

(3) No verification shall be made under sub-section (1) after the assessment of the dealer is initiated under section 46.

#### **43. Audit of accounts :-**

(1) Subject to such conditions and in such manner as may be prescribed, the Commissioner shall, from among registered dealers, select on a random basis such percentage, or such class or classes of dealers, as may be prescribed, for audit of the accounts, registers or documents maintained or kept by such dealer for any year or part thereof, not being a period which has ended five years previous to the day of selection.

(2) After a selection is made under sub-section (1), the Commissioner shall, with due notice to the dealer so selected, proceed to audit the accounts and registers and documents maintained or kept by the dealer to verify the correctness of returns furnished and the admissibility, of various claims including the input tax credit for the year referred to in sub-section (1).

(3) Any audit under this section shall be completed within six months from the date on which the selection is made by the Commissioner.

#### **44. Credit and debit notes :-**

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

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

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

#### CHAPTER 7

Provisional assessment and assessment upon hearing and determination of interest.

### **45. Provisional assessment :-**

(1) Where a registered dealer fails to furnish turn in respect of any period within the prescribed date and where no action has been taken against him under section 28, the Commissioner or any other person appointed under section 3 to assist him, may, notwithstanding anything contained in section 46, proceed to assess the dealer provisionally for the period of such default after giving him a reasonable opportunity of being heard.

(2) If the dealer fails to make an application to the Commissioner for extension of date of payment of the unpaid amount of tax and interest referred to in sub-section (2) of section 32, before the date of hearing under sub-section (1) of section 45, the said authority shall assess the dealer on the basis of past returns, or past records, where no such returns are available, on the basis of information received by the Commissioner and shall impose penalty not exceeding twice the amount of tax so assessed and direct the dealer to pay the amount of tax assessed and penalty imposed by issuing a notice in such manner and within such date, as may be prescribed.

(3) If the dealer furnishes return along with receipted challans showing full payment of tax and interest payable according to such return and fifty per centum of penalty demanded in the notice of demand served under sub-section (2), on or before the date of payment mentioned in such notice, the provisional assessment shall stand revoked to the extent of demand of tax, interest and balance fifty per centum of penalty, on the date on which such return is filed by the dealer.

(4) Notwithstanding anything contained in any sub-section of this section, if the dealer produces documentary evidence for furnishing return and receipted copy of challan showing full payment of tax and interest, if any, on or before the date fixed under sub-section (1) for hearing, the said authority shall close the proceeding initiated under this section.

(5) Nothing contained in this section shall prevent the Commissioner from making assessment under section 46 and any tax or interest paid against provisional assessment or assessments, as the case may be, shall be adjusted against tax and interest payable on assessment made under that section. Explanation.-For the purposes of this section, "reasonable opportunity" shall ordinarily mean not more than two adjustments

### **46. Assessment, imposition of penalty for concealment of turnover after giving notice to the registered dealer :-**

(1) Where-

(a) no return is furnished by a registered dealer for any return period of a year; or

(b) a registered dealer fails to make payment of the amount of net tax in deficit within the date specified in a notice issued under sub-section (2) of section 41; or

(c) upon verification of return under sub-section (1) of section 42, or upon any enquiry, or upon information received under section 43, or otherwise, the Commissioner is not satisfied that the returns furnished by a registered dealer are correct and complete; or

(d) upon search or seizure of accounts, registers or documents, or of goods of a registered dealer, the Commissioner has reasons to believe that the registered dealer has not accounted for any turnover of sales or turnover of purchases in the return furnished by such dealer or in the accounts, registers or documents referred to in section 63; or

(e) a refund has been made to a registered dealer under clause (a) of section 61 or section 62; or

(f) a registered dealer brings to the notice of the Commissioner, in writing, within six months from the end of any year that due to error in fact or in law, an amount of tax has been paid by him in excess of what was actually payable by him for any return period of that year and the Commissioner is satisfied on the grounds adduced by such registered dealer; or

(g) a registered dealer brings to the notice of the Commissioner in the prescribed manner that excess amount of input tax credit accumulated during a year has remained unadjusted at the end of next year also and he wants refund of the said excess amount, the Commissioner shall, after giving a notice to such dealer, proceed in such manner as may be prescribed to assess to the best of his judgement the amount payable by such dealer in respect of such year or in respect of any return of such year, as he may deem fit and proper:

Provided that no assessment shall be made under this section for the period which assessment has been made under sub-section (2), of section 45 and not revoked under sub-section (3) of section 45 and action has been taken under section 55 or appeal is pending under section 84 or application for revision is pending under section 86: Provided further that if on appeal or revision the assessment order passed under section 45 is either annulled or set aside, no further action shall be taken under section 45 and assessment for that period shall be made afresh under this section and such assessment shall be completed within two years from the date of order made in appeal or revision.

(2) While making an assessment under sub-section (1), the Commissioner may, if he is satisfied that the dealer has defaulted in furnishing any return as required under section 32 without any reasonable cause, direct that the dealer shall pay by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding fifty per centum of the amount so assessed.

(3)

(a) Where-

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

(ii) a dealer, being a registered dealer or a dealer required by the Commissioner to furnish return under sub-section (1) of section 32 has furnished incorrect statement of his turnover of sales or purchases or incorrect particulars of such sales or purchases in the return furnished by him under sub-section (2) of that section or

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

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

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

(c) Any amount of penalty that remains unpaid after the date specified in the notice referred to in sub-section (2) or, where such date has been extended under the proviso to that subsection, after the expiry of extended time, shall be recoverable in accordance with the provisions of section 55.

(4) The Commissioner shall-

(a) in making the assessment under sub-section (1) and imposing the penalty under sub-section (2), give the dealer a reasonable opportunity of being heard; and

(b) after making such assessment or imposing such penalty, issue to the dealer a notice directing him to pay the tax or penalty found to be due upon such assessment in such manner as may be prescribed.

(5) No penalty under sub-section (2) shall be imposed in respect of the same fact for which a prosecution under clause (b) of sub-section (1) of section 93 has been instituted and no prosecution shall lie vice versa.

#### **47. Assessment as per return :-**

(1) Where the Commissioner does not proceed to assess any registered dealer under sub-section (1) of section 46 for any year or any return period of such year, he shall accept the returns furnished by the dealer for such year or any return period of such year as correct and complete and assessment in respect of such year or such period shall be deemed to have been made.

(2) Upon making of an assessment under sub-section (1), the Commissioner shall inform the dealer who is assessed under that sub-section in such manner and within such time as may be prescribed.

#### **48. Assessment of tax payable by dealers other than registered dealers :-**

(1) If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period but has failed to get himself registered or has not been registered, the

Commissioner shall proceed in such manner as may be prescribed to assess to the best of his Judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and, in making such assessment, shall give the dealer a reasonable opportunity of being heard and after making such assessment, the Commissioner shall issue to the dealer a notice in the prescribed form directing him to pay the amount of tax found to be upon such assessment in such manner as may be prescribed.

(2) A casual dealer liable to pay tax under section 15 shall, within ten days from the date of sale or purchase, submit a statement in writing giving his permanent residential address and particulars of such sale or purchase along with receipted copy of challan as proof for payment of tax for such sale or purchase to the Commissioner and if on examination of the statement and documents submitted by the casual dealer, it is found that he is liable to make payment of any residual amount of tax, the casual dealer shall be asked to pay such residual amount of tax and a penalty not exceeding two hundred times but not less than one hundred times the amount of such residual amount of taxable within the specified date mentioned in the notice in such form as may be prescribed.

#### **49. Limitation for assessment :-**

(1) No assessment under section 45 or section 46 or section 47 shall be made after the 30th day of June next following the expiry of two years from the end of the year in respect of which or part of the assessment is made.

(2) No assessment under section 48 shall be made after the 30th day of June next following the expiry of six years from the end of the year in respect of which or part of the assessment is made.

(3) Notwithstanding anything contained in sub-section (1), or subsection when a fresh assessment is required to be made in pursuance of an order section 84, section 85, section 86 or section 87, or in pursuance of any order of the Tribunal or any court, such fresh assessment may be made at any time within two years from the date of such order.

(4) In computing the time limited by sub-section (1), sub-section (2), or sub-(3), for making any assessment under section 45, or section 46, or section 7, or section 48, the period during which the Commissioner is restrained from commencing or continuing any proceedings from such assessment by an order of the Tribunal or any court shall be excluded.

#### **50. Determination of interest :-**

(1) Where the Commissioner is satisfied that a dealer is liable to pay interest under section 33 or section 34, he shall, in such manner as may be prescribed, determine the amount of interest payable to such dealer.

(2) If on such determination, any additional amount of interest is found to be payable by the dealer or any excess amount of interest is found to be refundable to the dealer, the Commissioner shall issue a notice, in the prescribed manner, to such dealer directing him to pay such additional amount or informing him of the excess amount paid, as the case may be.

(3) No determination of interest under sub-section (1) in respect of interest payable under section 33 shall be made after the date of assessment under section 46 in

respect of the period for which interest is determined.

**51. Rectification of mistake in determination of interest :-**

(1) Where there is an apparent mistake in the determination of interest under subsection (1) of section 50, the Commissioner may, on his own motion or upon application by a dealer, within six months from the date of such determination of interest, rectify the amount of interest payable by such dealer or refundable to, such dealer and issue a fresh notice for payment of interest in the manner prescribed under that section.

(2) Where on rectification of the amount of interest under subsection (1), any excess amount is found refundable to a dealer, the Commissioner shall, in the manner referred to in section 62, refund such excess amount of interest to such dealer.

**52. Assessment without prejudice to prosecution for any offence :-**

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

**53. Assessment after partition of Hindu undivided family or dissolution of firm and tax payable by a deceased dealer :-**

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

(a) the tax, penalty or interest payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption or dissolution shall or assessed, imposed or determined as if no such partition, disruption or dissolution had taken place and all the provisions of this Act, shall apply accordingly, and

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

(2) Where a dealer carrying on a business as the sole proprietor dies and the business is partitioned, disrupted or discontinued upon his death, the executor or administrator of, or the legal heir to, the estate of such deceased dealer shall pay tax, penalty or interest payable by, or due from, such deceased dealer out of such estate; and such executor, administrator or legal heir shall, notwithstanding the provisions of clause (11) of section 2 be deemed to be a dealer under this Act for the purposes of assessment of tax, determination of interest, and payment, recovery and refund of tax or interest, and all the provisions of this Act relating to appeal, revision or review in respect of the tax assessed or interest determined, shall apply accordingly.

**54. Certain transfers of immovable property by a dealer to be void :-**

(1) Where during the period commencing on the date of service of a notice of demand under clause (b) of sub-section (4) of section 46, section 48, sub-section (2) of section 50, or sub-section (1) of section 51 and ending on the date of service of notice by the authority competent to issue such notice under clause (a) or clause (b) of sub-section (1) of section 55, as the case may be, any dealer without having made full payment of tax, interest or penalty specified in such notice of demand as aforesaid, creates a charge on, or transfers or delivers possession (by way of sale, mortgage, gift, exchange or any other mode of transfer of right, title or interest) of, any of his immovable properties in favour of other person, such charge, transfer or delivery of possession shall be void as against any claim in respect of the amount of tax, interest or penalty due from such dealer: Provided that the provisions of this section shall not apply to a dealer unless-

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

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

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

**55. Recovery of tax, penalty and interest, appointment of Tax Recovery Officer, etc :-**

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

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

(b) by the Tax Recovery Officer in accordance with the provisions of sub-section (2) of this section 56, section 57, section 58, or section 59 and subject to such procedure for recovery of tax, penalty and interest as may be prescribed where the State Government directs by general or special order so to do in respect of such class or classes of dealers having their places of business in such area or areas as may be specified in such order.

(2) Where any amount of tax, penalty or interest is recoverable in accordance with the provisions of clause (b) of sub-section (1), the Commissioner may send to the Tax Recovery Officer a certificate under his signature specifying the amount of such tax, penalty or interest due from the dealer, owner or lessee of warehouse, person or owner of goods (hereinafter referred to as the certificate-debtor), and the Tax Recovery Officer shall, on receipt of such certificate, proceed to recover from the



certificate-debtor the amount specified in the certificate by one or more of the following modes in the prescribed manner:-

- (a) attachment and sale of the movable property of the certificate-debtor;
- (b) attachment and sale of the immovable property of the certificate-debtor;
- (c) arrest of the certificate-debtor and his detention in prison;
- (d) appointing a receiver for the management of the movable and immovable properties of the certificate-debtor.

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

(4) For the purposes of this section, section 56, section 57, section 58 or section 59, the State Government may by notification appoint such number of Tax Recovery Officers as it may deem fit, and specify in the notification the area or areas over which they shall exercise jurisdiction.

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

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

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

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

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

(8) The Tax Recovery Officer to whom the original certificate is sent shall, subject to the provisions of sub-section (1) of section 58, hear the petition, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any part of the amount for which certificate was signed.

(9) Where any proceedings for the recovery of any amount of tax, penalty or interest remaining unpaid have been commenced under this section and the amount of tax, penalty or interest is subsequently modified enhanced or reduced in consequence of any assessment made, or order passed on appeal, revision or review, under this Act, the Commissioner may, in such manner and within such period as may be prescribed, inform in this behalf the certificate-debtor and the

Collector or the Tax Recovery Officer, as the case may be, by whom or under whose order the recovery is being made or to be made, and thereupon such proceedings may be continued as if the amount of tax, penalty or interest as so modified, enhanced or reduced has been substituted for the amount of tax, penalty or interest which was to be recovered under sub-section (1).

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

(11) The interest payable under sub-section (10) shall be recoverable in such manner as may be prescribed.

#### **56. Tax Recovery Officer to whom certificates to be forwarded :-**

(1) The Commissioner may forward the certificate referred to in subsection (2) of section 55 in respect of a certificate debtor to-

(a) the Tax Recovery Officer within whose jurisdiction such certificate debtor carries, or carried, on his business or within whose jurisdiction the principal place of business is situated or within whose jurisdiction the goods are seized under section 76: or

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

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

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

(b) is of the opinion that for the purpose of expediting or securing the recovery of the whole or any part of the amount under this section, it is necessary so to do, he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered, to a Tax Recovery Officer within whose jurisdiction such certificate-debtor resides or has property, and thereupon that Tax Recovery Officer shall also proceed to recover such amount as if the certificate of the copy thereof had been the certificate sent to him by the Commissioner.

#### **57. Amendment of certificates for tax recovery :-**

(1) Notwithstanding that a certificate has been forwarded to a Tax Recovery Officer, the Commissioner shall have the power to withdraw or cancel such certificate or to correct any clerical or arithmetical mistake in such certificate.

(2) The Commissioner shall intimate to the Tax Recovery Officer any order withdrawing or cancelling a certificate or any correction made by him under sub-

section (1) of this section.

**58. Validity of certificates for tax recovery :-**

(1) When the Commissioner forwards a certificate to a Tax Recovery Officer under sub-section (2) of section 55, it shall not be open to the certificatedebtor to dispute before the Tax Recovery Officer the propriety or correctness of the assessment of tax imposition of penalty or determination of interest, under this Act and no objection to such certificate on any such ground shall be entertained by the Tax Recovery Officer.

(2) It is hereby declared that where any amount of tax, penalty or interest is recoverable in accordance with the provisions of clause (a) of sub-section (1) of section 55, the provisions of section 9 and section 10 of the Bengal Public Demands Recovery Act, 1913, shall not apply to any proceedings for the recovery of such amount of tax, penalty or interest.

**59. Transmission of certificates for tax recovery to Collector in certain cases :-**

Notwithstanding anything contained in section 55, where any amount of tax, penalty or interest due from a certificate debtor cannot be recovered by the Tax Recovery Officer by any one of the modes referred to in that section and where the Tax Recovery Officer has information that such certificate-debtor owns any property outside West Bengal, the amount of such tax, penalty or interest remaining unpaid shall be deemed to be an arrear of land revenue as if it were payable to the Collector, and the Tax Recovery Officer shall apply to the Collector of the district in West Bengal in which such certificate-debtor carries on his business, has his principal place of business or his goods have been seized, as the case may be, for the recovery of the said amount in accordance with the provisions of the Revenue Recovery Act, 1890.

**60. Special mode of recovery of tax, penalty and interest by Commissioner :-**

(1) Notwithstanding the forwarding of a certificate under section 55 for recovery of any amount of tax, penalty or interest, the Commissioner may, at any time or from time to time, by notice in the prescribed form, require any person from whom money is due or may become due to a dealer or any person who holds or may subsequently hold money for, or on account of, such dealer, to deposit into a Government Treasury or the Reserve Bank of India under the appropriate head of account, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due from such dealer in respect of the arrears of such tax, penalty or interest or the whole of the money when such money is equal to or less than that amount.

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

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

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

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

(6) Where a person to whom a notice under this section is sent proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the dealer or that he does not hold any money for, or on account of, the dealer or that the money demanded or any part thereof is not likely to be due to the dealer or be held for, or on account of, the dealer, then, nothing contained in this section shall be deemed to require such person to deposit any such sum or part thereof, as the case may be.

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

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

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

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

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

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

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

**61. Refund to certain class of persons :-**

Subject to such restrictions and conditions as may be prescribed, the Commissioner shall, in the prescribed manner, refund-

(a) to a registered dealer, who owns an industrial unit in the Falta Special Economic Zone, or Software Technology Park, or who owns an Export Oriented Unit within the meaning of the Export and Import Policy as formulated under section 5 of the Foreign Trade (Development and Regulation) Act, 1992, situated anywhere in West Bengal outside the Falta Special Economic Zone or Software Technology Park, the amount of tax realised or realisable from him by another registered dealer in respect of the purchases in West Bengal-

(i) of goods for use directly in the manufacture of goods by him in such unit for sale by him in the course of export within the meaning of section 5 of the Central Sales Tax Act, 1956,

(ii) of goods, being the containers or other material used for packing of the goods referred to in sub-clause (i),

(iii) of goods, being the containers or other packing material for packing of the goods manufactured in such unit;

(b) to the Consulates, the amount of tax realised or realisable from them by a registered dealer in respect of taxable goods purchased by them in West Bengal for their personal or official use; or

(c) to the specialised agencies of the United Nations Organisation, the amount of tax realised or realisable from them by a registered dealer in respect of purchases of taxable goods by them in West Bengal for their official use.

**62. Refund of tax etc. paid in excess :-**

Subject to other provision of this Act the Commissioner shall, in the manner and within the time, as may be prescribed, refund to a dealer any amount of tax, penalty or interest paid by such dealer in excess of the amount due from him under this Act and also excess of input tax credit over output tax payable under this Act.

**CHAPTER 9**

Maintenance of accounts etc. by a dealer

**63. Maintenance of accounts, records etc :-**

(1) Every registered dealer, or a dealer on whom a notice has been served to furnish return under sub-section (1) of section 32, shall maintain and keep a true and up-to-date account of the value of goods purchased or manufactured or sold by him or goods held by him in stock, and, in addition to the books of accounts that a dealer maintains or keeps for the purposes referred to in this sub-section, he shall maintain and keep such registers or accounts in such form as may be prescribed.

(2) Every registered dealer or dealer referred to in sub-section (1) shall keep at his place of business all accounts, registers, documents and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, which may be required by the Commissioner for the purpose of inspection under sub-section (2) of section 66, and shall not keep or remove elsewhere such accounts, registers and documents except in accordance with the requirement of law or except for any purpose for which just cause is shown to the satisfaction of the Commissioner.

#### **64. Compulsory issue of tax invoice, cash memo or bill :-**

(1) If a registered dealer sells any goods to any person, he shall issue to the purchaser a serially numbered tax invoice in the prescribed manner, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such tax invoice, duly signed and dated.

(2) If a dealer to whom sub-section (i) does not apply and who has become liable to pay tax under any provision of this Act, sells any goods to any person, he shall issue to the purchaser a serially numbered tax invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such cash memorandum or bill, duly signed and dated.

(3) If a dealer to whom sub-section (1) or sub-section (2) do not apply and whose turnover of sales during any year calculated from the commencement of such year has exceeded two lakh fifty thousand rupees, sells any goods to any person, he shall issue to the purchaser a serially numbered tax invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such cash memorandum or bill, duly signed and dated:

Provided that if the State Government is of the opinion that the requirement under this section shall cause hardship to a certain class or classes of dealers included in sub-sections (2) and (3), and that such requirement should, subject to fulfilment by any class or classes of dealers of certain conditions and restrictions to be imposed to ensure that there is no evasion of tax, be dispensed with, it may prescribe by rules such class or classes of dealers, and such conditions and restrictions subject to which the requirement of this section in respect of such class or classes of dealers shall be dispensed with.

#### **65. Imposition of penalty for failure to issue tax invoice, cash memo or bill :-**

(1) If a registered dealer or a dealer contravenes the provisions of section 64, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing, direct that he shall pay, in the manner as may be prescribed, by way of penalty, a sum equal to double the amount of tax which could have been levied under this Act in respect of the sales referred to in that section where no tax invoice, cash memorandum or bill, as the case may be, has been issued, or five thousand rupees, whichever is greater:

Provided that if such registered dealer or dealer proves to the satisfaction of the Commissioner that he deals exclusively in goods specified in Schedule A, sales of which are declared tax-free under section 21, the Commissioner may exempt such registered dealer or dealer from payment of penalty or impose such lesser amount of penalty as he deems fit and proper.

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

date of service of such notice.

#### CHAPTER 10

Production, inspection, search and seizure of accounts of a dealer or person and sealing of any place, room and almirah etc.

### **66. Production and inspection of accounts, registers and documents :-**

(1) The Commissioner, Special Commissioner, Additional Commissioner or any person appointed under section 6 to assist the Commissioner may, subject to such conditions as may be prescribed, require any person or dealer-

(a) to produce before him any accounts, registers or documents, or

(b) to produce before him digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, or

(c) to furnish any information relating to-

(i) stock of goods held by such person or dealer, or

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

(iii) any other matter related to the business of the person or dealer, and

(d) to explain to the Commissioner or Special Commissioner or Additional Commissioner any accounts, registers or documents or electronic record produced by such person or dealer, as may be deemed necessary for the purposes of this Act.

(2) All accounts, registers, documents and electronic record relating to the stock of goods held, purchases, sales and deliveries of goods by any dealer and all goods kept in any place of business of any dealer shall, at all reasonable time, be open to inspection by the Commissioner Special Commissioner, Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner.

### **67. Seizure of dealers accounts :-**

If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax, he may, for reasons to be recorded in writing seize such accounts, registers or documents of the dealer including computerised or electronic accounts maintained on any computers or electronic media, as may be necessary, and shall grant to the dealer a receipt for such accounts, registers or documents seized by him and shall retain all or any of them only for such period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act: Provided that the Commissioner shall not retain any of the accounts, registers or documents including computerised or electronic accounts seized by him under this section for a period exceeding one year from the date of the seizure unless he gives the dealer a reasonable opportunity of being heard and records in writing the reasons therefor:

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

### **68. Entry and search of place of business or any other place :-**

(1) For the purposes of section 66 or section 67, the Commissioner may enter and

search-

(a) any place of business of any dealer, or person, or owner or lessee of warehouse, or

(b) any place other than that referred to in clause (a), where the Commissioner has upon information received reason to believe that such dealer, or person, or owner or lessee of warehouse, keeps or is, for the time being keeping any accounts, registers, documents or records of his business or any stock of goods for the purpose of business.

(2) The Commissioner may,-

(a) either before, or after, entering any place referred to in clause (a) or clause (b), of sub-section (1) or while searching such place, break open any door or window of a house, room or warehouse where, or

(b) while searching any place referred to in clause (a), or clause (b), of sub-section (1), break open any almirah, safe, box or receptacle in which, the Commissioner has reason to believe any dealer or person, or owner or see of warehouse, keeps or is, for the time being, keeping any accounts, registers, documents or records of his business or any stock of goods for the purpose of his business.

**69. Sealing of any place or almirah etc :-**

The Commissioner may, subject such conditions and restrictions as may be prescribed, seal any house, room, warehouse, almirah, safe, box or receptacle in which, he has reason to believe, dealer, person, transporter or owner or lessee of warehouse, keeps or is, for the time being, keeping any accounts, registers, documents or records of his ainess or any stock of goods for the purpose of business.

**CHAPTER 11**

Maintenance of accounts by transporter, carrier or transporting agent and inspection, search and seizure of such accounts.

**70. Maintenance of accounts by transporter, carrier or transporting agent and inspection :-**

(1) Notwithstanding anything contained in any other law for the time being in force, every transporter, carrier or transporting agent, to whom the provisions of section 25 apply, shall maintain, in the prescribed form proper account of taxable goods transported by him into, or outside or within. West Bengal on account of any person, being a consignee or consignor, as the case may be, and shall, on demand by the Commissioner, furnish such information to the Commissioner as may be required by the Commissioner in relation to transport of such goods by such transporter, carrier or transporting agent.

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

**71. Entry into the place of, and search and seizure of accounts of, a transporter etc :-**

Where-

(a) any transporter, carrier or transporting agent fails to maintain proper account in



the prescribed form, or fails to furnish information to the Commissioner, as required by sub-section (1) of section 70, or

(b) the Commissioner has reason to believe that the account referred to in sub-section (1) of section 70 is relevant for the purpose of carrying out any investigation or holding any inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith, the Commissioner-

(a) may enter and search any place of transporting business or any other place where such transporter, carrier or transporting agent, for the time being, keeps any accounts, records or documents in relation to transport of goods, and

(b) may, for reasons to be recorded in writing, seize such accounts, records or documents.

## **72. Power of the Commissioner to stop delivery of goods and seizure of such goods :-**

(1) Where any transporter, carrier or transporting agent has-

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

(b) transported into West Bengal any consignment of taxable goods on account of any person or dealer, and the Commissioner has information that such person or dealer is not in existence at the address given in the way bill, tax invoice or any other invoice, consignment note or any document of like nature in respect of any consignment of goods referred to in clause (a), or clause (b), the Commissioner may direct the transporter, carrier or transporting agent, by an order in writing, that-

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

(ii) the consignment of taxable goods referred to in clause (b) shall not be delivered, till the matter is investigated into by the Commissioner or till a period of fifteen days (excluding Sunday or a public holiday declared under the Negotiable Instruments Act, 1881) expires from the date of communication of such direction to the transporter, carrier or transporting agent, whichever is earlier.

(2) Where the Commissioner, after giving the person or dealer referred to in clause (a), or clause (b), as the case may be, of subsection (1), a reasonable opportunity of being heard or after causing an enquiry about the existence of such person or dealer, is satisfied that such person or dealer-

(a) is in existence at the address given in the way bill, tax invoice or any other invoice, consignment note or any document of like nature, the Commissioner shall forthwith withdraw, by an order in writing, his direction issued under sub-section (1) to the transporter, carrier or transporting agent; or

(b) is not in existence at the address given in the way bill, tax invoice or any other invoice, consignment note or any document of like nature, the transport of the consignment of taxable goods by such person or dealer to any place outside, or within, or into, West Bengal, shall be deemed to be in contravention of the provisions of section 73, or section 81, as the case may be, and the Commissioner

shall seize such consignment of goods under section 76.

#### CHAPTER 12

Measures to regulate transport of goods; checkpoints; seizure of goods; imposition of penalty; disposal of seized goods

### **73. Restriction on movement of goods :-**

(1) To ensure that there is no evasion of tax, no person shall transport from any railway station, steamer station, airport port, post office or any checkpoint set up under section 83 or from any other place any consignment of goods except in accordance with such restrictions and conditions as may be prescribed.

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

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

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

(b) organisations and specialised agencies of the United Nations,

(c) Khadi and Village Industries Commission,

(d) Embarkation Headquarters, Shipping section, Customs Group, Ministry of Defence, Government of India, Kolkata, or

(e) such other persons, organisations or institutions as may be prescribed.

### **74. Interception, detention and search of road vehicles and search of warehouse :-**

For the purpose of verifying whether any consignment of goods are being or have been transported in contravention of the provisions of section 73 or section 81, the Commissioner may, subject to such restrictions as may be prescribed,-

(a) intercept detain and search at any place referred to in subsection (1) of section 73, a road vehicle or river craft or any load carried by a person, or

(b) search at any warehouse or at any other place in which, according to his information, such goods so transported in contravention of the provisions of section 73 have been stored, or

(c) intercept, detain and search at any checkpoint or at any other place referred to in sub-section (2) of section 81, any goods vehicle.

### **75. Stock of goods stored in undisclosed warehouse in contravention of section 73 :-**

(1) If any registered dealer has not disclosed any warehouse in his application for registration made under sub-section (1) of section 24, or has not furnished information under clause (b) of section 102 regarding change of his warehouse or opening of a new warehouse for amendment of his certificate of registration under section 27 and if any stock of goods is found in such warehouse after search made under section 74 by the Commissioner, it shall be presumed that such dealer has

transported such goods in contravention of section 73 and stored those goods in such warehouse, unless such dealer-

(a) explains to the Commissioner the reason for not disclosing the warehouse or furnishing the information under clause (b) of section 102, and

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

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

#### **76. Seizure of goods :-**

(1) Where, upon interception or search referred to in clause (a), or clause (c), of section 74, the Commissioner has reason to believe that any goods are being transported in contravention of the provisions of section 73, or section 81, he shall first detain the vehicle carrying such goods for a period not exceeding forty-eight hours and, if the person bringing, importing or receiving or carrying such goods fails to furnish such particulars in such form or such document, as may be prescribed under section 73, or section 81, shall hereafter seize such goods together with any container or other materials for the packing of such goods:

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

(2) Where, upon search of any warehouse or any other place referred to in clause (b) of section 74, the Commissioner has reason to believe that any goods transported in contravention of the provisions of section 73, have been stored in such warehouse or other place, he shall seize such goods together with container or any other materials for the packing of such goods or in case such goods are not seized, he may seal such warehouse:

Provided that the Commissioner may, at the option, in writing, of the person to whom the seizure of goods is made under this sub-section, give custody of the seized goods to such person on the express condition that he shall keep such seized goods in the warehouse, or at any other place, referred to in clause (b) of section 74, where the seizure has been made, and that he shall not dispose of such seized goods in any manner before the proceedings, if any, initiated in respect of such seized goods under section 77 is concluded: Provided further that the Commissioner may take physical possession of such seized goods from the custody of such person even before the conclusion of the proceedings under section 77 where such person communicates, in writing, the Commissioner his difficulty in keeping such seized goods in his custody after the expiry of sixty days from the date of giving of custody of such goods to him.

(3) If the dealer fails to produce before the Commissioner the documents referred to in clause (b) of sub-section (1) of section 75 and fails to satisfy him as to the goods

found in such warehouse have not been transported in contravention of section 73, he shall, for reasons to be recorded in writing, seize the goods and grant a receipt specifying the items of goods so seized.

(4) Where the authority referred to in sub-section (1) seizes any goods under at sub-section, it may, at the option of any transporter, in writing, give custody such seized goods to him in the manner prescribed, and allow him to transport ch seized goods up to the godown or warehouse of the transporter in West Bengal as declared by him, on the express conditions that such transporter all keep such seized goods in the said godown or warehouse and that he shall not deliver such seized goods to the consignee or owner of such seized goods so transported by him before the proceedings, if any, initiated against the consignee owner of such seized goods under section 77 is concluded:

Provided that the authority referred to in sub-section (1) may take physical ssession of such seized goods from the custody of the transporter even before the conclusion of the proceedings under section 77 where such transporter communicates, in writing, to such authority his difficulty in keeping such seized in his custody after the expiry of sixty days from the date of storing of ch seized goods in his godown or warehouse.

**77. Penalty for transporting goods into West Bengal in contravention of section 73 or section 81 :-**

(1) If any goods are seized under section 76, the Commissioner may, by an order in writing, impose upon the person from whom such goods are seized or the owner of such goods, where particulars of the owner of such goods are available, or where there is no claimant for such goods at the time of such seizure, any person who subsequently establishes his claim of ownership or possession of such goods, after giving such person or owner, as the case may be, a reasonable opportunity of being heard, a penalty of a sum not exceeding fifty per centum of the value of such goods as may be determined by him in accordance with the rules made under this Act:

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

(a) thirty per centum of the value of goods if the rate or tax leviable under sub-section (2) of section 16 in respect of such goods does not exceed fifteen per centum including special additional tax;

(b) fifty per centum of the value of goods if the rate or tax leviable under sub-section (2) of section 16 in respect of such goods exceeds fifteen per centum including special additional tax.

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

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

(3) The goods seized under section 76 shall be released in the prescribed manner

on payment of the penalty imposed under subsection (1).

(4) If the penalty is not paid by the date specified in the notice issued under sub-section (2), the Commissioner may, in such manner and subject to such restrictions and conditions as may be prescribed, sell the goods so seized under section 76 in open auction and remit the sale proceeds thereof to a Government Treasury.

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

(a) the person to whom the Commissioner has, under sub-section (4) of section 3, delegated his power for revision under section 86, pending disposal of an application for revision against an order for imposition of penalty referred to in sub-section (1), or

(b) the Commissioner, where there is no application for revision under section 85, may, for reasons to be recorded in writing, direct release of the goods seized under section 76 on such terms and conditions as he may deem fit.

(6) Notwithstanding anything contained in sub-section (4), the Commissioner may, subject to such rules as may be made under this Act, where the goods seized under section 76 are-

(a) of perishable nature, or

(b) required to be used by a specified date, sell such goods in open auction after the expiry of such period as he may consider fit and proper, if he is of opinion that such goods may become unusable or unsaleable on detention, or destroy such goods if the said goods become unusable before the sale in open auction actually takes place.

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

(a) first for incidental charges, if any, relating to auction sale of such goods;

(b) secondly, for expenses, if any, for storage of such goods;

(c) thirdly, for penalty imposed under sub-section (1); the balance of the proceeds of sale, if any, shall be paid to the owner of the goods or, if his particulars are not available, to the persons from whom such is were seized under section 76, upon application within one year from the date of sale or within such further period as may be allowed by the Commissioner for cause shown to his satisfaction.

**78. Penalty on transporter for contravention of the provisions of sub-section (4) of section 76 :-**

Where a transporter, at his option, takes custody under sub-section (4) of section 76 of any goods seized under sub-section (1) of that section and thereafter contravenes the provisions of sub-section (4) at section by delivering such seized goods wholly or partly to the consignee or owner of such seized goods without prior permission, in writing, of the missioner, the Commissioner shall, after giving the transporter a reasonable ortunity of being heard, impose upon him a penalty, in the manner prescribed, not exceeding fifty per centum of the market value of such seized goods in West Bengal.

**79. Penalty for contravention of provisions of section 73 when goods**

**transported are not available :-**

(1) Where the goods are, or have been, transported by a person in contravention of restrictions or conditions prescribed ? section 73 and such goods are not available for seizure under sub-section (1) of section 76, the Commissioner shall, after giving such person a reasonable opportunity of being heard, impose a penalty of a sum not exceeding twenty-five per centum of the value of such goods.

(2) The procedure for imposition of penalty as prescribed under section 78 apply mutatis mutandis in the matter of imposition or penalty under this section.

**80. Penalty for contravention of provisions of section 73 when goods transported are not available :-**

**81. Measures to prevent evasion of tax on sales within West Bengal :-**

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

(a) where carriage is caused by a sale of such goods, two copies of the bill or cash memorandum issued by the seller of such goods, and such other documents as may be prescribed, or

(b) where carriage is caused otherwise than by a sale of such goods, two copies of the forwarding note, delivery challan or document of like nature, by whatever name called, issued by the owner or consignor of such goods, and such other documents as may be prescribed:

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

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

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

**82. Exemption from operation of provisions of section 80 and section 81 :-**

Nothing in section-80 or section 81 shall apply to transport of any goods where such goods are transported by or on behalf of-

(a) the King of Nepal or Bhutan, the Royal Family of Nepal or Bhutan, or the Government of Nepal or Bhutan;

(b) Government or a local authority;

(c) a diplomatic or consular office, any organisation or specialised agency of the United Nations;

(d) Indian Red Cross Society or a Charitable Institution for charitable purposes recognised by Government.

### **83. Setting up of checkpoints :-**

If the State Government is of the opinion that it is necessary so to do with a view to preventing evasion of tax in respect of sale or purchase of goods in West Bengal, it may, by notification, set up checkpoints or barriers for carrying out the purposes of section 74, section 80 or section 81 at such places within West Bengal as may be specified in such notification.

### CHAPTER 13

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

### **84. Appeal against assessment :-**

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

Provided that no appeal shall be entertained by the said authority unless he is satisfied that the amount of tax, penalty or interest, as the appellant may admit to be due from him and an amount equal to twenty per centum of the tax, penalty or interest in dispute has been paid: Provided further that the said authority may if he thinks fit, for reasons to be recorded in writing, entertain the appeal without prior payment of the amount equal to twenty per centum of the tax, penalty or interest in dispute, or on payment of such smaller amount of the tax, penalty or interest in dispute as it may direct.

(2) Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may, for reasons to be recorded in writing,-

(a) confirm, reduce, enhance or annul the assessment, or

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

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

(4) Where-

(a) the appellant makes payment of the amount equal to twenty per centum of the tax, penalty or interest in dispute in accordance with the first proviso to sub-section (1), or

(b) the authority as referred to in the second proviso to sub-section (1), entertains any appeal without payment of the amount equal to twenty per centum of the tax, penalty or interest in dispute, or on payment of such smaller amount of tax, penalty or interest in dispute as required under the said proviso, as the case may be the realisation of the amount of tax, penalty or interest in dispute in excess of the amount referred to in clause (a), or clause (b), as the case may be, shall remain stayed till the disposal of an appeal referred to in sub-section (2).

Explanation.-For the purposes of this section, section 85, section 86 or section 87,-

(a) "assessment" means-

(i) assessment of tax and imposition of penalty under section 45, section 46 and section 48,

(ii) determination of interest under section 50, or

(iii) rectification of mistake in determination of interest under section 51.

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

**85. Suo motu revision by Commissioner :-**

Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any assessment made or deemed to have been made under sub-section (1) of section 47 or order passed by a person appointed under sub-section (1) of section 6 to assist him.

**86. Revision by Commissioner upon application :-**

Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, upon application, revise any order, other than an order referred to in section 87 and an order of assessment against which an appeal lies under section 84, passed by a person appointed under sub-section (1) of section 6 to assist him.

**87. Revision by Appellate and Revisional Board :-**

(1) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Appellate and Revisional Board may, upon application, revise a final appellate or revisional order from an order of assessment: Provided that where an applicant fails to appear in person or through an authorised agent on the date and at the time and place fixed for hearing on the application for revision preferred by him, the Appellate and Revisional Board may, in its discretion, dismiss such application for such default of the applicant: Provided further that the Appellate and Revisional Board may, upon application filed by an applicant within forty-five days from the date of order of dismissal of an application for revision for default passed by it under the first proviso or within such further time as it may allow for cause shown to its satisfaction, restore the application for revision so dismissed.

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

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



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

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

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

#### **88. Review of an order :-**

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

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

#### **89. Appeal, review or revision in certain cases :-**

An appeal, review or revision in respect of any order passed in the matter of tax recoverable under clause (b) of sub-section (1) of section 55, section 56, section 57 or section 59 shall lie in the manner as may be prescribed.

#### **90. Reasonable opportunity to be given to the person likely to be adversely affected :-**

Before any order under section 84, section 85, section 86, section 87 or section 88, which is likely to affect any person adversely, is passed, such person shall be given a reasonable opportunity of being heard.

**91. Power of taking evidence on oath :-**

The Appellate and Revisional Board the Commissioner, the Special Commissioner, the Additional Commissioner, or any person appointed under sub-section

(1) of section 6 to assist the Commissioner, shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely-

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

(b) compelling the production of documents; and

(c) issuing commissions for the examination of witnesses, and any proceeding under this Act before the Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purpose of section 19 and, of the Indian Penal Code.

**92. Reference to the Tribunal :-**

(1) Within sixty days from the date of passing by the Appellate and Revisional Board of any order under section 87 affecting any liability of any dealer to pay tax, penalty or interest under this Act, such dealer by application in writing accompanied by a fee of one hundred rupees, or the Commissioner, by application in writing, may require the Appellate and Revisional Board to refer to the Tribunal any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the Appellate and Revisional Board refuses to make such reference, the applicant may, within ninety days of such refusal, either-

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

(b) apply to the Tribunal against such refusal.

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

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

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

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

(7) The payment of the amount, if any, of tax, penalty or interest due in accordance with the order of the Appellate and Revisional Board in respect of which an application has been made under sub-section (1), shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the amount of tax penalty or interest paid in excess shall be refunded in accordance with the provisions of section 61.

#### CHAPTER 14

Offences and penalties, special provision for liability to prosecution and compounding of offences.

### **93. Offences and penalties :-**

(1) Whoever-

(a) carries on business as a dealer without furnishing the security demanded under section 26; or

(b) fails to pay full amount of tax payable for any period in accordance with the provisions of sub-section (2) of section 32; or

(c) fails to make payment of interest payable under section 33 or section 34; or

(d) fails to comply with the provisions of section 63; or

(e) contravenes the provisions of section 73; or

(f) fails to comply with any requirement under section 81; or

(g) neglects or refuses to furnish information required by section 100: or

(h) neglects or refuses to furnish information required by section 102; or

(i) neglects to furnish any information required by section 105, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both and, a Court having jurisdiction may, in addition to any fine as aforesaid, order confiscation of any goods seized under section 76 for the offence of contravention of section 73.

(2) Whoever carries on business as a dealer in contravention of sub-section (1) of section 24 shall be punishable with simple imprisonment which may extend to one year or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence.

(3) Whoever, being a transporter, carrier or transporting agent, fails or neglects to comply with the provisions of section 25 or sub-section (4) of section 76, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(4) Whoever-

(a) furnishes a false return referred to in section 32; or

(b) produces a fake or fabricated tax invoice referred to in section 22;

(c) fails without reasonable cause to furnish a return under section 32;

(d) refuses to comply with any requirement under section 66; or

(e) fails to submit before the prescribed authority statements, accounts or declarations under section 103, within prescribed time; shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years and with fine not exceeding ten thousand rupees or with both, and when the offence is a continuing one, with a daily fine, not exceeding fifty rupees, during the period of the continuance of the offence.

(5) Whoever has in his possession any prescribed form referred to in section 73, not obtained by him or by his principal or agent in accordance with the provisions of this Act or any rules made thereunder, shall be deemed to have committed the offence of criminal breach of trust under section 405 of the Indian Penal Code, and every such person who commit such criminal breach of trust, shall. On conviction, be punishable with imprisonment of either description which shall not be less than three months but which may extend to three years or with fine not exceeding ten thousand rupees or with both.

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

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

(8) Whoever obstructs any officer making inspection or search or seizure or taking other action under section 66, section 67, section 68, section 69, section 70, section 71, section. 75 or section 76, shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(9) Whoever realises any amount of special additional sales tax referred to in section 13 in contravention of the provisions thereof shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to one year or with fine not exceeding five thousand rupees or with both.

(10) Whoever abets any of the offences mentioned in sub-section (2), sub-section (3), sub-section (5), sub-section (6), sub-section (7), shall, if the act of offence is committed in consequence of the abatement, be punishable with the same punishment as provided for the offence.

(11) Any offence punishable under sub-section (1), sub-section (2), sub-section (3), or sub-section (4) shall be cognizable and bailable while that punishable under

sub-section (5), sub-section (6), sub-section (7), sub-section (8), or sub-section (9), shall be cognizable and non-bailable.

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

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

Explanation II.-If any of the offences under sub-section (2), sub-section (2), or sub-section (4) continues, such offence shall be deemed to be a continuing offence.

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

#### **94. Special provision for liability to prosecution :-**

(1) Where an offence referred in section 93 has been committed by a dealer, every person who, at the time the offence was committed, was in charge of, and was responsible to, the dealer for the conduct of, the business of the dealer, as well as the dealer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided under section 93, if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under section 93 has been committed by a dealer and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer, as the case may be, of the dealer, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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

(1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence under clause (b), clause (c), clause (d), clause (e), clause (f) or clause (g) of sub-section (1), sub-section (2), sub-section (3), sub-section (4), sub-section (5), sub-section (6), sub-section (7), sub-section (9), or sub-section (10), of section 93, or under any rules made under this Act, may, either before or after the commencement of any proceedings against him in respect of such offence at his option, compound such offence, and the Commissioner may, at his discretion, accept from such person, by way of composition of such offence, such sum not exceeding five lakh rupees as may be determined by the Commissioner.

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

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

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

**96. Compounding of penalty that may be imposed under section 106 :-**

(1) Subject to such conditions as may be prescribed, any dealer to whom a notice has been issued under sub-section (1) of section 106, may, before the date fixed in such notice for hearing, at his option, compound the penalty proposed to be imposed, as mentioned in such notice, as the Commissioner may at his discretion, accept from such dealer, by way of composition of penalty proposed to be imposed under sub-section (1) of that section, and amount equal to ten per centum of the value of goods claimed by the dealer to have transferred by him otherwise than by way of sale in West Bengal in the statement furnished by him under section 105.

(2) On payment in full of the amount referred to in sub-section (1), the proceedings commenced against the dealer under sub-section (1) of section 106 shall not be proceeded with further.

CHAPTER 15

Miscellaneous

**97. Indemnity of Government servant :-**

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

**98. Returns etc. to be confidential :-**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act, other than the proceedings before a criminal Court, shall save as provided in sub section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as aforesaid, be entitled to require any Government servant to produce before it any such statement, return, accounts, documents, or record or any part thereof, or to give evidence before it in respect thereof.

(2) If, save as otherwise provided in sub-section (3), any Government servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine

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

(a) for the purposes of any prosecution under the Indian Penal Code, the Prevention of Corruption Act, 1998, or this Act or any preliminary inquiry for ascertaining whether such prosecution lies,

(b) in connection with any suit or proceeding in a Civil Court to which the State Government or any person appointed under this Act is a party and which relates to any matter arising out of any proceeding under this Act,

(c) where it is necessary to make such disclosure for the purposes of this Act

(d) to an officer of Government for the purpose of enabling such Government to levy or realise any tax or duty imposed by it,

(e) to an officer of Government for the audit of receipts and refunds of tax penalty or interest under this Act,

(f) in connection with an inquiry concerning allegations of corruption or official misconduct against any Government servant or for the purpose of taking disciplinary action against such Government servant,

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

(h) to any officer of the State Government to enable such officer to perform his executive functions relating to the affairs of the State,

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

#### **99. Clearance certificate :-**

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

(a) has no liability to pay tax or has not defaulted in furnishing any return or returns together with the receipted challan or challans showing payment of all tax payable under this Act or the Central Sales Tax Act, 1956,

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

(c) has made satisfactory provision for securing the payment of tax by furnishing bank guarantee in favour of the Commissioner or otherwise, as the case may be: Provided that the provisions of this sub-section shall not apply to any payment where any amount is deductible from such payment under sub-section (1) of section 40.

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

#### **100. Power to call for information or statement from bank, post office, railway, etc :-**

The Commissioner, the Special Commissioner, the Additional Commissioner, or any authority authorised by the Commissioner, may require, by notice, any bank, post office, railway, Controller and certifying authority as defined under the Information Technology Act, 2000, website holder, transporter, carrier, shipper, owner or lessee of a warehouse, or clearing, forwarding or transporting agent to furnish to him any information or statement useful for, or relevant to, any proceedings under this Act or to produce before him any accounts, registers, documents or other records as

may be necessary for this Act.

**101. Statement to be furnished by dealer, transporter, owner or lessee of warehouse :-**

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

**102. Information to be furnished by dealers regarding changes of business :-**

If any registered dealer-

(a) sells or otherwise disposes of his business or any part of his business or effects or comes to know of any change in the ownership of his business, or discontinues his business or changes his place of business or opens a new place of business, or

(b) discontinues or changes his warehouse or opens a new warehouse, or

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

(d) in the case of a company, effects any change in the constitution of its board of directors, or

(e) accepts digital signature certificate issued under the Information Technology Act, 2000. he shall, within the prescribed time and in the prescribed manner, inform the prescribed authority accordingly and if any such dealer dies, his legal representative shall, in the like manner, inform the said authority.

**103. Statements, accounts or declarations to be furnished by dealers :-**

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

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

**104. Additional information to be furnished by dealers :-**

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

**105. Information to be furnished by dealers in respect of transfer of goods otherwise than by way of sale :-**



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

**106. Penalty for furnishing incorrect information under section 105 :-**

(1) Where upon verification of the information in the statement furnished under section 105 by a dealer relating to transfer of goods otherwise than by way of sale in West Bengal, it comes to the knowledge of Commissioner that-

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

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

(c) the agent of such dealer is not traceable or is not in existence at the address furnished in such statement; or

(d) the agent of the dealer to whom the transfer of goods has been made otherwise than by way of sale denies to have any knowledge of the goods claimed to have been transferred to him by the dealer; or

(e) the goods have not been transported by the transporter named in such statement under the consignment note or railway receipt referred to in the said statement, the Commissioner may, in such manner as may be prescribed, impose on such dealer, by way of penalty, a sum, not less than fifteen per centum but not exceeding twenty-five per centum of the value of the goods so claimed to have been transferred by him.

(2) If any penalty is imposed under sub-section (1) for concealment of any sale with an intent to evade payment of tax thereon in respect of any period, such sale shall be excluded in determining the turnover of sales in respect of such period for the purpose of imposition of penalty, if any, under sub-section (3) of section 46.

**107. Transfer of business by registered dealer :-**

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

**108. Partial transfer of business by a registered dealer :-**

(1) Where the ownership of a part, division or unit of the business of a registered dealer is transferred by sale, gift, bequest, inheritance or otherwise, or transferred by way of a lease or licence, and if the transferee, lessee or licensee, as the case

may be, carries on such business as a part of his existing business or a new business in some other name, he shall, for the purposes of this Act (except for the liabilities under this Act already discharged by the transferor) be deemed to be a dealer in default in the matter of payment of any tax, penalty or interest payable by or due from the transferor in respect of all the periods immediately preceding the date of such transfer in relation to such part, decision or unit.

(2) If the transferee, lessee or licensee is a registered dealer and carries on the business referred to in sub-section (1), he shall, by an application under section 27, get his certificate of registration duly amended.

(3) If the transferee, lessee or licensee is not a dealer registered under this Act and if he carries on business from such part, division or unit, he shall notwithstanding anything contained in section 10, section 11, section 12 or section 14, be liable to pay tax under this Act from the date of such transfer and be liable for registration under section 24.

(4) Where the transferee, lessee or licensee is deemed to be a dealer in default under sub-section (1) for any amount of tax, penalty or interest payable by, or due from, the transferor, such amount of tax, penalty or interest shall be recoverable from such transferee, lessee or licensee under section 55.

#### **109. Bar to proceedings in Civil Court :-**

(1) Save as provided in section 92, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner, the Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, and no order passed by the Appellate and Revisional Board under this Act or the rules made thereunder shall be called into question in any civil Court, and save as provided in section 84, section 85, section 86 or section 87, no appeal or application for revision or review shall lie against such assessment or order.

(2) Save as provided in section 89, no order passed by Tax Recovery Officer under this Act or the rules in Schedule F and no order passed upon and appeal from or review or revision of, any order of the Tax Recovery Officer in accordance with the provisions of this Act and the rules in Schedule F shall be called into question in any Civil Court, and, save as provided in section 89, no appeal, review or revision shall lie against such order.

#### **110. Manner of payment of tax, penalty, interest :-**

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

#### **111. Power of Commissioner to collect statistics from dealers :-**

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

specified in the notification.

**112. Power of State Government to prescribe rates of fees :-**

(1) Fees payable upon a memorandum of appeal or application for review or revision, or upon any other miscellaneous application or petition, other than an application referred to in sub-section (1) of section 92, for relief shall be such as may be prescribed: Provided that any fee prescribed under this section shall not exceed one thousand rupees.

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

**113. Power of State Government to engage any person, firm or company to collect certain Information :-**

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

**114. Power of State Government to make rules :-**

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

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

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

**115. Saving in relation to sales outside West Bengal, inter-State sales and sales in course of import or export :-**

Nothing in this Act shall be construed to impose, or authorise the imposition of, tax on the sale or purchase of goods where such sale or purchase takes place

(a) outside West Bengal;

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

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

**116. Deferment of payment of tax in respect of certain industrial units :-**

(1) Notwithstanding anything contained in sub-section (2) or sub-section (4) of section 32, but subject to sub-section (2) of this section, the Commissioner may, in the prescribed manner and subject to such restrictions and conditions as may be prescribed, permit the output tax payable under this Act by a registered dealer or a class or classes of dealers as may be prescribed, according to his returns referred to in sub-section (1) of section 32 or the tax due from him according to a notice issued under sub-section (4) of section 32, to be deferred subject to the provisions

of the rules made under this section.

(2) Where the State Government considers it necessary so to do in the public interest, it may, after due consideration of certain factors as may be prescribed, relax the ceiling to such extent as may be prescribed.

**117. Penalty for contravention or misuse of provisions of section 116 :-**

Where a dealer has contravened any of the provisions of section 116 or rules made thereunder or furnishes incorrect or fabricated statements or forged documents with the intention to deceive the Government, the Commissioner shall, after giving such dealer a reasonable opportunity of being heard, impose upon him a penalty, in the manner prescribed, a sum not exceeding one hundred per centum of such tax which would have been payable by such dealer had he not been granted such deferment.

**118. Measures for registered dealer holding eligibility certificate under West Bengal Sales Tax Act, 1994 :-**

Notwithstanding anything contained elsewhere in this Act

(a) where a registered dealer has been enjoying, or has been entitled to enjoy, the benefit of deferment of tax under section 40, section 42 or section 43, as the case may be, of the West Bengal Sales Tax Act, 1994 for a specified period or for a specified amount determined with respect to gross value of the fixed capital assets, immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed deferment of payment of net tax payable by him under this Act by the Commissioner, for the balance unexpired period or the balance eligible amount, as the case may be, with respect to gross value of the fixed capital assets, whichever expires earlier;

(b) where a registered dealer was enjoying benefit of tax holiday under section 39 of the West Bengal Sales Tax Act, 1994, for a specified period immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed deferment of output tax payable by him under this Act by the Commissioner for the balance unexpired period or until the amount of the aggregate of the amounts of such tax payable from the date of eligibility earned for the first time under the West Bengal Sales Tax Act, 1994, exceeds the limit of two hundred per centum of gross value of the fixed capital assets as on date immediately preceding the appointed day, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed;

(c) where a registered dealer was enjoying benefit of remission of tax under the West Bengal Sales Tax Act, 1994, for a specified period or a specified amount determined with respect to gross value of the fixed capital assets, immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed deferment of output tax payable by him under this Act by the Commissioner for the balance unexpired period extended by forty per centum of such period, or balance eligible amount with respect to gross value of fixed capital assets extended by forty per centum of such value whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed.

(2) For the purposes of clause (a), clause (b) or clause (c), a complete British Calendar month shall be considered, wherever a part of a month is involved.

(3) For the purpose of clause (a), clause (b) or clause (c), the term "balance" means the period or the eligible amount, remaining unexhausted on the appointed day.

**119. Special provisions for waybills, rules, regulations, notifications or orders issued under West Bengal Sales Tax Act, 1994 :-**

Notwithstanding anything contained elsewhere in this Act,-

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

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

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

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

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

**120. Option to make payment of deferred tax at discounted rate :-**

Notwithstanding anything contained elsewhere in this Act, dealers eligible for payment of tax in accordance with clause (a), clause (b) or clause (c) of section 3 shall have an option to make payment within the financial year of tax deferred during the preceding year, on the basis of a discount formula, in such manner as may be prescribed.

**121. West Bengal Sales Tax Act, 1994 not to apply on commodities governed by the West Bengal Value Added Tax Act, 2003 :-**

Nothing in the West Bengal Sales Tax Act, 1994, shall apply in relation to the goods which are governed by the West Bengal Value Added Tax Act, 2003, on and

from the appointed day.

**122. . :-**

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

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

**123. Amendment of West Bengal Act 49 of 1994 :-**

The West Bengal Sales Tax Act, 1994, shall be amended in the manner specified in the Schedule E to this Act.

SCHEDULE 1

SCHEDULE-A

SCHEDULE A		
[See section 21]		
<b>Goods on sale of which no tax is payable</b>		
Serial No.	Description of goods	Conditions and Exceptions
(1)	(2)	(3)
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 but not including aquatic, poultry and cattle feed supplements, additives etc.	
4.	Betel leaves.	
5.	Books periodicals and journals but not including exercise books, drawing books graph books, account books, laboratory books, diaries, letter pads.	
6.	Charkha, Ambar Charkha; handlooms and handloom fabrics and Gandhi Topi.	
7.	Charcoal.	
8.	Coarse grains other than paddy, rice and wheat.	
9.	Condoms and contraceptives.	
10.	Cotton and silk yarn in hank.	
11.	Curd, Lussi, butter milk and separated milk.	
12.	Earthen pot but not including ceramic pot.	
13.	Electrical energy.	
14.	Firewood.	
15.	Fishnet and fishnet fabrics.	
16.	Fresh milk and pasteurised milk.	
17.	Fresh plants, saplings and fresh flowers.	
18.	Fresh vegetables & fruits.	
19.	Fresh garlic and ginger.	
20.	Glass bangles.	
21.	Human blood and blood plasma.	
22.	Indigenous handmade musical instruments.	
23.	Kumkum, bindi, alta and sindur.	
24.	Meat, fish, prawn and other aquatic products when not cured, or frozen; eggs and livestock and	

25.	National flag.
26.	Organic manure.
27.	Paddy.
28.	Non-judicial stamp paper sold by Government Treasuries; postal items like envelope, postcard etc. sold by Government; rupee note, when sold to the Reserve Bank of India and cheques, loose or in book form but does not include first day cover, folder.
29.	Rakhi.
30.	Raw jute.
31.	Raw wool.
32.	Sago and Tapioca globules.
33.	Semen including frozen semen.
34.	Silk worm laying, cocoon and raw silk.
35.	Slate and slate pencils.
36.	Sweetmeats except those made of concentrated milk commonly known as kheera or pulses or besan and other than cake and pastry but including curd.
37.	Tender green coconut commonly known as daab.
38.	Toddy, Neera and Arak.
39.	Unbranded bread.
40.	Unprocessed and unbranded salt.
41.	Water other than
	(i) aerated, mineral, distilled, medicinal, ionic, battery, demineralised water, and
	(ii) water sold in sealed container.

## SCHEDULE 2

### SCHEDULE-B

SCHEDULE B		
[See clause (a) of sub-section (2) of section 16]		
List of goods taxable at 1%		
Serial No.	Description of goods	Conditions and Exceptions
(1)	(2)	(3)
1.	Gold.	
2.	Gold and Silver ornaments, whether set with stone or other materials or not including gold and silver filigree and other gold and and silver articles.	
3.	Precious stones including semi-precious stones and pearls real, artificial or cultured.	
4.	Silver.	
5.	Tea sold under the auspices of any tea auction centre in West Bengal duly authorised by the Indian Tea Board.	

## SCHEDULE 3

### SCHEDULE-C

## SCHEDULE 4

### SCHEDULE-C

(See serial No. 42 of Part I]

**Items under category of IT products**

Serial No	Description of items	HSN Code
(1)	(2)	(3)
1.	Word Processing Machines and Electronic Typewriters	84.69
2.	Electronic Calculators	84.70
3.	Computer Systems and Peripherals, Electronic Diaries	84.71
4.	Parts and Accessories of HSN 84.69, 84.70 and 84.71 for items listed above.	84.73
5.	DC Micromotors, Stepper motors of an output not exceeding 37.5 Watts.	85.01
6.	Parts of HSN 85.01 for items listed above	85.03
7.	Uninterrupted Power Supplies (UPS) and their parts	85.04
8.	Permanent magnets and articles intended to become permanent magnets (Ferrites).	85.05
9.	Electrical Apparatus for line telephony or line telegraphy including line telephone sets with cordless handsets and telecommunication apparatus for carries-current lien systems or for digital line systems; videophones.	85.17
10.	Microphones, multimedia Speakers, Headphones, Earphones and Combines Microphone/Speaker Sets and their parts.	85.18
11.	Telephone answering machines	85.20
12.	Prepared unrecorded media for sound recording or similar recording of other phenomena.	85.22
13.	Prepared unrecorded media for sound recording or similar recording of other phenomena.	85.23
14.	IT software on any media	85.24
15.	Transmission apparatus other than apparatus for radio broadcasting or TV broadcasting transmission apparatus incorporating reception apparatus, digital still image video cameras.	85.25
16.	Radio communication receivers, Radio pagers	85.27
17.	(i) Aerials, antennas and their parts (ii) Parts of items at 85.25 and 85.27 listed above	85.29
18.	LCD Panels, LED Panels and parts thereof	85.31
19.	Electrical capacitors, fixed, variable or adjustable (Pre-set) and parts thereof.	85.32
20.	Electrical resistors (including rheostats and potentiometers), other than heating resistors.	85.33
21.	Printed Circuits	85.34
22.	Switches, Connectors and Relays for up to 5 amps at voltage not exceeding 250 Volts, Electronic fuses.	85.36



23.	Data/Graphic Display tubes, other than TV Picture tubes and pans thereof.	85.40
24.	Diodes, transistors and similar semi-con ductor devices, Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled I modules or made up into panels; Light emitting diodes; Mounted piezo-electric crystals.	85.41
25.	Electronic Integrated Circuits and Micro-assemblies	85.42
26.	Signal Generators and parts thereof	85.43
27.	Optical fibre cables,	85.44
28.	Optical fibre and optical fibre bundles and cables	90.01
29.	Liquid Crystal devices Flat Panel display devices and parts thereof.	90.13
30.	Cathode ray oscilloscopes Spectrum Analysers, Cross-talk meters, Gain measuring instruments, Distortion factor meters, Psophometers, Net work & Logic analyser and Signal analyser.	90.30

SCHEDULE 5  
SCHEDULE-C

SCHEDULE 6  
SCHEDULE-C

SCHEDULE D

[See section 19]

**Goods on which tax is leviable at such rate as may be fixed by notification under section 19.**

Serial No.	Description of goods
(1)	(2)

1. All other goods not specified in Schedule A, Schedule B, Schedule C or in this Schedule.

## SCHEDULE E

[See section 123]

### Amendment in the West Bengal Sales Tax Act, 1994

In the West Bengal Sales Tax Act, 1994

- (a) in Schedule I, all serial numbers in column (1) and the entries relating thereto in column (2) and column (3) shall be omitted:  
(b) for Schedule IV, the following Schedule shall be substituted:

#### "SCHEDULE F

[See section 10 and 17(1)(c)]

**Goods on sale of which tax is leviable at such rate as may be fixed by notification under section 18 (singlepoint levy) read with sub-clause (a) of clause (40) of section 2.**

Serial No.	Description of goods
(1)	(2)

	PART A
1.	Country liquor.
2.	Foreign liquor, whether made in India or not, including brandy, whisky, vodka, gin, rum liqueur, <i>cordials bitters</i> , and <i>wines</i> , or a mixture containing any of these, as also <i>beer</i> , <i>ale</i> , <i>porter</i> , <i>cider</i> , <i>perry</i> and other similar potable fermented liquors.
3.	Lottery ticket.
	PART B
1.	Motor spirit having a flashing point below 24.4 degree Celsius required for use as fuel in aircraft.
2.	Motor spirit having a flashing point at or above 24.4 degree Celsius required for use as fuel in aircraft.
3.	Motor spirit other than motor spirit referred to in items 1 and 2 having a flashing point at or above 24.4 degree Celsius.
4. Motor spirit of any other kind.	
(c) in Schedule VIIIA, all serial numbers in column (1) and the entries relating thereto in column (2), column (3) and column (4) shall be omitted.	