

## **Bihar Value Added Tax Ordinance, 2003**

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### **Bihar Value Added Tax Ordinance, 2003**

WHEREAS, The Legislature of the State of Bihar is not in session; AND, WHEREAS, the Governor of Bihar is satisfied that the circumstances exist which render it necessary for him to take immediate action to promulgate the Bihar Value Added Tax Ordinance, 2003, NOW, THEREFORE, in exercise of the power conferred by clause (1) of Article 213 of the Constitution of India, the Governor is pleased to promulgate the following Ordinance:-

#### **1. Short Title, Extent And Commencement :-**

(1) This Ordinance may be called the Bihar Value Added Tax Ordinance 2003. (2) It shall extend to the whole of the State of Bihar. (3) This section shall come into force at once and the remaining provisions of this Ordinance shall come into force on such date as the State Government may, by notification in the official Gazette appoint and different dates may be appointed for different provisions. (4) Any notification, order, declaration or rule and any appointment to an office may be issued or made under the Ordinance at any time after passing thereof; but such notification, order, declaration, rule or appointment issued or made, shall not take effect until the date appointed under sub-section (3) for bringing into force the respective provision under which it is issued or made.

## **2. Definitions :-**

In this Ordinance, unless there is anything repugnant in the subject or context-

- (i) "Assistant Commercial Taxes Officer" means an Assistant Commercial Taxes Officer appointed under section 10 of this Ordinance;
- (ii) "Assistant Commissioner of Commercial Taxes" means an Assistant Commissioner of Commercial Taxes and Additional Assistant Commissioner of Commercial Taxes appointed under section 10 of this Ordinance;
- (iii) "assessing authority" means an officer of the Commercial Taxes Department appointed under section 10 of the Ordinance empowered to make any assessment under the Ordinance;
- (iv) "business" includes-
  - (a) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern, irrespective of the volume, frequency, continuity or regularity of such trade, commerce, manufacture, adventure or concern; and
  - (b) any transaction of sale or purchase in connection with, or incidental or ancillary to the trade, commerce, manufacture, adventure or concern referred to in clause (a), including -
    - (i) any transaction involving goods, whether original or second hand, unserviceable, obsolete or discarded goods, mere scrap or waste material; and
    - (ii) any transaction involving goods obtained as waste products or by-products in the course of manufacture or processing of other goods or mining or generation or distribution of electrical energy or any other form of power;
  - (c) any transaction in connection with, or incidental or ancillary to the commencement or closure of such business;
- (v) Capital goods means:
  - (a) plant, machinery, equipment including pollution control, quality control, lab equipment, cooling equipments, used in manufacture of taxable goods for sale;
  - (b) in respect of above goods when used for a purpose other than manufacture, if the value of the same is an amount not less than rupees fifty thousand;
- (vi) "Commercial Taxes Officer" means a Commercial Taxes Officer appointed under section 10 of this Ordinance;
- (vii) "Commissioner" means the Commissioner of Commercial Taxes or Additional Commissioner of Commercial Taxes and includes any other officer upon whom the State Government may, by notification, confer all or any of the powers and duties of the Commissioner under this Ordinance;
- (viii) "dealer" means any person who, whether regularly or otherwise, in the course of business buys, sells, supplies,

distributes or does anything incidental to such buying, selling, supplying or distributing of goods, directly or indirectly, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes- (a) a local authority; (b) a Hindu undivided family; (c) a company, or any society (including a co-operative society), club, firm, association of persons or body of individuals, whether incorporated or not, which carries on such business; (d) a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplies or distributes goods to its members; (e) an industrial, commercial, banking, or trading undertaking whether or not of the Central Government or of any of the State Governments or of a local authority; (f) an advertising concern or agency; (g) a casual trader; (h) a commission agent, broker, factor, a del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of the principal; (i) any person engaged in any activity in the nature of business; Explanation I- Every person who acts as an agent on behalf of a dealer residing outside the State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as - (a) a commission agent, broker, factor, a del-credere agent, an auctioneer or any other mercantile agent, by whatever name called; or (b) an agent for handling goods or documents of title to goods; or (c) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch of a firm or company situated outside the State; shall be deemed to be a dealer for the purpose of this Ordinance. Explanation II - The Central or a State Government or any of their departments or offices which, whether or not in the course of business, buy, sell or supply on commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purpose of this Ordinance. Explanation III - Any non-trading, commercial or financial establishment including a bank, an insurance company, a transport company and the like which whether or not in the course of business buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment, commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purposes of this Ordinance; (ix) "Declared Goods" means goods declared under section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956) to be of special importance in inter-State trade or commerce; (x) "Deputy Commissioner of Commercial

Taxes" means Deputy Commissioner of Commercial Taxes or Additional Deputy Commissioner of Commercial Taxes appointed under section 10 of this Ordinance; (xi) "Document" means a document as defined under section 29 of the Indian Penal Code, 1860 (XLV of 1860) and includes - (a) books of accounts maintained in the course of business; or (b) electronic data, computer programmes, computer tapes, computer disks and the like that furnishes evidence; or (c) any other record or form as defined in the Information Technology Act, 2000; (xii) "Document of title" means any document which confers a title to goods and includes bill of lading, dock warrant, warehouse-keepers certificate, and warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented; (xiii) "Earlier law" means the Bihar Finance Act, 1981 (Bihar Act 5, of 1981); (xiv) "Goods" means all kinds of movable property including livestock, computer software sold in any form, SIM cards used in mobile telephony and all materials, commodities and articles (as such or in some other form) but excluding newspapers, electricity, actionable claims, stocks, shares or security: Explanation I - Materials, commodities and articles attached to or forming part of an immovable property which are agreed to be severed under the contract of sale shall be deemed to be goods within the meaning of this clause. Explanation II - Materials, commodities and articles sold or supplied as such or in some other form in the execution of works contract, lease or hire purchase or those to be used in the fitting out, improvement or repair of movable property shall be deemed to be goods within the meaning of this clause; (xv) "Goods Carrier" includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers; (xvi) "Government" means the Government of Bihar; (xvii) "Gross Turnover" means - (a) For the purposes of levy of sales tax, in respect of sale of goods, aggregate of sale prices received or receivable by a dealer on sales as defined under sub-section (xxxii) of section 2 of this Ordinance and includes sale of goods made outside the state or in the course of inter-State trade or commerce or export but does not include sale price of goods which have borne the incidence of purchase tax under sections 4 and 5; (b) For the purposes of levy of purchase tax, aggregate of purchase prices paid or payable by a dealer during any given period in respect of

purchase of goods or class or description of goods which are liable to tax under sections 4 and 5 of this Ordinance; Explanation: The amount received by a dealer on account of price variation or price escalation in respect of sale or supply of goods shall be deemed to form part of Gross Turnover of the financial year during which it is actually received. (xviii) "Input" means goods purchased in the course of business- (a) for resale (b) for use in manufacture of goods including packing materials but excluding purchases of petrol, diesel and natural gas and (c) for use as capital goods as defined under sub-section (v) of this section. (xix) "Input Tax" means the amount paid or payable by way of tax under this Ordinance in respect of purchase of any taxable goods by a purchasing registered dealer under the Ordinance; (xx) "Inspector" means an Inspector of Commercial Taxes appointed under Section 10; (xxi) "Month" means a calendar month; (xxii) "Notification" means a notification published in the Official Gazette; (xxiii) "Output Tax" means the tax charged or chargeable in respect of sale or supply of goods made by a registered dealer; (xxiv) "Person" means person as defined under section 3(42) of the General Clauses Act, 1897 (Act No. X of 1897); (xxv) "Place of Business" means any place where a dealer, either usually or for the time being, manufactures, sells or purchases goods or keeps accounts of stocks, manufactures, sales or purchases, execution of works contracts, hire purchase contracts and lease contracts or any other place where business activity takes place and includes - (a) the place of business of an agent in case of a dealer carrying on business through an agent, or (b) any place or building whether or not any business is carried on therein, in which a person carrying on a business, keeps any of his books of accounts, documents, stocks or other things, relating to his business; (xxvi) "Prescribed" means prescribed under the rules framed under this Ordinance; (xxvii) "Prescribed authority" means the Authority prescribed under the Rules framed under this Ordinance to exercise powers conferred under different sections and perform such functions as may be conferred by or under this Ordinance. (xxviii) "Purchase Price" means the amount paid or payable by a dealer as valuable consideration in respect of purchase of goods and includes - (a) any sum charged for anything done by the vendor in respect of the goods at the time of or before the delivery thereof; (b) transport costs or freight, if any; (c) trade commission, if any, by whatever name called; (d) clearing, forwarding and handling charges, if any; (e) insurance charges, if any; (f) taxes or duties under any law for

the time being in force, by whatever name called, if any; (g) cost of packing, if any; and (h) any other charges or costs other than those specified above, if such charges or costs are incurred or paid in respect of goods so purchased and includes any amount payable by a purchaser for anything done by the seller in respect of goods at the time of or before delivery thereof to the buyer if any of the costs, charges, taxes, or duties as aforesaid are incurred in relation to the transfer of property in goods: Explanation-(1) Purchase price shall not include tax paid or payable under this Ordinance by a dealer in respect of any such purchase. Explanation-(2) For the purpose of this clause, purchase price shall include the amount paid or payable by the purchaser by way of non-refundable deposit, whether by way of a separate agreement or not, in connection with or incidental to or ancillary to, the said purchase of goods; (xxix) "Quarter" means the quarter ending on the 30th June, 30th September, 31st December and 31st March and the expression "quarterly" shall be construed accordingly; (xxx) "Registered Dealer" means a dealer in possession of a valid registration certificate granted to him under section 19 of this Ordinance or under the provisions of the earlier law. (xxxi) "Resale" means a sale of goods in the State of Bihar or in the course of inter-State trade and commerce and export out of the territory of India (a) in the same form as they are purchased, or (b) without doing anything to them which amounts to, or results in, a manufacture, and the term "re-sell" shall be construed accordingly; (xxxii) "Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or for other valuable consideration or any other transfer of property in goods effected for the purpose of sales promotion and includes- (a) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration; (b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; (c) a delivery of goods on hire purchase or any system of payment by installments; (d) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; (e) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; (f) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or



not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of these goods by the person to whom such transfer, delivery or supply is made; (xxxiii) "Sale Price" means the amount payable to a dealer as valuable consideration for the sale or supply of any goods and includes (a) any sum charged for anything done by the vendor in respect of the goods at the time of or before the delivery thereof; (b) transport costs or freight, if any; (c) trade commission, if any, by whatever name called; (d) clearing, forwarding and handling charges, if any; (e) insurance charges, if any; (f) taxes or duties levied under any law for the time being in force, by whatever name called, if any; (g) cost of packing, if any; and (h) any other charges or costs other than those specified above, if such charges or costs are incurred or paid in respect of goods so purchased and includes any amount payable by a purchaser for anything done by the seller in respect of goods at the time of or before delivery thereof to the buyer if any of the costs, charges, taxes, or duties as aforesaid are incurred in relation to the transfer of property in goods: Explanation-1. Where goods are sold on hire purchase or any system of payment by installments, the sale price of such goods shall be inclusive of insurance charges, interest and hire charges and such other charges related to hire purchase or any system of payment by installments. Explanation-2. Where goods are sold by way of transfer of right to use such goods, the sale price thereof shall be the amount of valuable consideration received or receivable by the transferor for such transfer; Explanation-3. Sale price shall not include sales tax paid or payable under this Ordinance to a dealer in respect of any such sale. Explanation-4. For the purpose of this clause, sale price shall include the amount received or receivable by the seller by way of non-refundable deposit, whether by way of a separate agreement or not, in connection with or incidental to or ancillary to, the said sale of goods; (xxxiv) "Tax" means the sales or purchase tax levied under this Ordinance. (xxxv) "Taxable goods" means all goods except those specified in Schedule I of this Ordinance; (xxxvi) "Tribunal" means the Tribunal constituted under section 9 of this Ordinance. (xxxvii) "Vessel" includes any ship, barge, boat, raft, timber, bamboos, or materials propelled in any manner; (xxxviii) "Works Contract" means any agreement for carrying out for cash or deferred payment or other valuable consideration, the construction,

fitting out, improvement or repair of any building, road, bridge or other immovable or movable property; (xxxix) "Year" means the financial year.

### **3. Charge Of Tax :-**

(1) Every dealer: (a) who is registered under the earlier law; or (b) who is either a manufacturer or who brings or causes to be brought any goods from any place outside the State or is liable for filing a Return under the Income Tax Act, 1961 or holds any license either under the Indian Drugs and Cosmetics Act, 1940, or the Bihar Excise Act, 1915, or the Essential Commodities Act, 1955, or the Indian Explosives Act, 1884 or the Mines and Minerals (Regulations and Development) Act 1957 or is a corporation constituted under any law, or is a Company incorporated under the Companies Act, 1956; or (c) who is registered under the Central Sales Tax Act, 1956 (LXXIV of 1956); or (d) whose place of business is located inside the market yard established under the Bihar Agriculture Produce Market act, 1960; or (e) whose Gross Turnover during a period not exceeding twelve months exceeded Rupees 5,00,000; or (f) who fulfills any two of the following conditions- (i) uses a telephone in his place of business or has a mobile telephone; (ii) has a place of business located in a building of a permanent nature or any part of such building; (iii) the receipts or payments of whose business, either wholly or in part, are transacted through any bank; (iv) owns any motor vehicle either in his name or in the name of his firm or in the name of any of his relatives; shall be liable to pay sales tax or purchase tax, as the case may be, with effect from the date of the first sale of any taxable goods effected by him. (2) Every dealer who has become liable to pay tax under sub-section (1) shall, subject to the provisions of sub-section (3), cease to be so liable after the expiry of twelve consecutive months from the date he either closes or discontinues his business or entirely transfers his business to another person. (3) A registered dealer shall, within a period of twelve consecutive months, pay tax on the stock of goods remaining with him on the date with effect from which he closes or discontinues his business. Provided that the Commissioner may extend the period of twelve consecutive months if the goods are held in stock beyond the said period of twelve months because of reasons beyond the control of the dealer. (4) Notwithstanding anything contained in sub section (1) where a dealer who is or was, less than six months earlier, liable to pay tax, starts a new business, either singly or jointly with other persons, or

joins other business, partnership firm or concern, tax as aforesaid, shall be payable on sales and purchases made from such business, partnership firm or concern, on and from the date the dealer starts or joins it unless the liability in respect of such business, partnership firm or concern has arisen from an earlier date. (5) The tax for each year or any part thereof may, with the previous approval of the Commissioner, be estimated and collected in advance, in the manner prescribed, during a year in such installments as may be fixed by the prescribed authority. For this purpose the prescribed authority may require the dealer to furnish an advance estimate of his taxable turnover for that year or any part thereof and may provisionally determine the amount of tax payable by the dealer in respect of the year or any part thereof. Thereupon the dealer shall pay the amount so determined by such date as may be fixed by such authority. Explanation 1-For the purposes of sub section (1), the expression "relative" will have the same meaning as is assigned to it under sub section (41) of section 2 of the Companies Act, 1956 (1 of 1956) read with section 6 of the said Act. Explanation 2-For the purposes of sub section (1), the expression "building" means any structure or superstructure which is intended for the use and occupation as a habitation or for purposes of trade, manufacture or commerce and includes a house, an outhouse or other roof structure whether of masonry, brick, mud, metal or other material but does not include a tent or other portable and temporary shelter.

#### **4. Levy Of Purchase Tax :-**

Subject to the provisions of sections 6 and 7 of this Ordinance, every dealer, who in the course of business- (1) purchases any goods, the sale or purchase of which is liable to tax under this Ordinance, in circumstances in which no tax is payable or has been paid on the sale price of such goods and-- (a) either consumes such goods i. in the manufacture of other goods for sale, or ii. otherwise, or (b) disposes of such goods in any manner other than by way of sale in the State, or (c) dispatches them to a place outside the State except as a direct result of sale or purchase in the course inter-State trade or commerce, shall pay tax on the purchase price of such goods at the same rate at which, but for the existence of the aforementioned circumstances, the tax would have been leviable on the sale price of such goods under section 14.

#### **5. Liability To Pay Purchase Tax On Certain Purchases :-**

Where a dealer purchases any taxable goods from any person, not

being a registered dealer and the said goods are used as capital assets anytime after such purchase there shall be levied, a purchase tax on the purchase price of such purchases at the rate at which sales tax is leviable on the said goods.

#### **6. Non-Levy Of Tax In Certain Cases :-**

(1) No tax shall be payable under this Ordinance on sales or purchases of goods which have taken place - (a) in the course of inter-state trade or commerce; (b) outside the state; (c) in the course of import of goods into, or export of goods out of the territory of India. (2) The provisions of the Central Sales Tax Act, 1956 (LXXIV of 1956) shall apply for determining when a sale or purchase of goods shall be deemed to have taken place in any of the ways mentioned in clauses (a), (b) or (c) of sub-section (1).

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

(1) No tax shall be payable on sale or purchase of goods specified in Schedule- I subject to the conditions and restrictions, if any, set out therein. (2) Subject to such conditions and restrictions as may be prescribed in this regard, the State Government may, by notification, exempt any sales made to officials and personnel of foreign diplomatic missions, foreign consulates or any sales made to the United Nations Organization or any of its affiliate bodies.

#### **8. Burden Of Proof :-**

Where any dealer claims that any sale or purchase effected by him is not liable to tax under Section 6 or Section 7 or sub-section (3) of Section 13, as the case may be, the burden of proving such claim shall be on the claimant dealer.

#### **9. Tribunal :-**

(1) There shall be a Tribunal to be called the "Bihar Value Added Tax Tribunal" consisting of such number of members appointed by the State Government as may be considered necessary for the proper discharge of functions conferred on the Tribunal by or under this Ordinance. (2) The State Government shall appoint one of the members of the Tribunal to be the Chairman. (3) The qualifications of the members constituting the Tribunal shall be such as may be prescribed and a member shall hold office for such period as may be prescribed. (4) Any vacancy in the membership of the Tribunal shall be filled up by the State Government as soon as practicable. (5) The functions of the Tribunal 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 Chairman. (6) If the

members of a bench are divided, the decision shall be the decision of the majority, if there is 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 Chairman for hearing on such point or points to one or more of the other members; and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it. (7) If a bench is of the opinion that any earlier decision of any bench on any point or issue requires reconsideration, then such bench shall refer the point or the issue to the Chairman for formation of a larger bench. The Chairman may thereupon form a larger bench of the Tribunal as he may determine and such larger bench shall, as far as practicable, be presided over by the Chairman. The point or the issue shall be decided according to the decision of the majority of the members constituting such larger bench. (8) Subject to such conditions and limitations, if any, as may be prescribed the Tribunal shall have the power to award cost and the amount of such cost shall be recoverable from the person ordered to pay the same as an arrear of land revenue. (9) An appeal against the order of the Commissioner shall only be heard and decided by a bench presided over by the Chairman. (10) Subject to the previous sanction of the State Government, the Tribunal shall, for the purpose of regulating its procedure including the place or places at which the Tribunal, the benches or the members thereof shall sit and dispose of its business, make regulations consistent with the provisions of this Ordinance and the Regulations made under this sub-section shall be published in the Official Gazette. (11) The Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Commercial Taxes authorities referred to in section 10 and proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of the Indian Penal Code. The Tribunal shall also be deemed to be the Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973. (12) The Tribunal shall have a separate establishment consisting of such staff and officers as may be prescribed by the State Government from time to time.

#### **10. Taxing Authorities And Inspectors :-**

(1) There shall be the following classes of authorities to be appointed by the State Government, for carrying out the purpose

of this Ordinance, namely:- (a) Commissioner of Commercial Taxes; (b) Joint Commissioner of Commercial Taxes; (c) Deputy Commissioner of Commercial Taxes; (d) Assistant Commissioner of Commercial Taxes; (e) Commercial Taxes Officer; (f) Assistant Commercial Taxes Officer; (g) Other officers and authorities; (2) The Commissioner shall have jurisdiction over the whole of the state of Bihar and all other officers and authorities appointed under sub-section (1), shall, within such areas or in respect of such transactions falling within an area as the Commissioner may by notification specify, exercise such powers as may be conferred and perform such duties as may be imposed by or under this Ordinance. (3) The State Government may, subject to such restrictions and conditions, if any, as it may impose, delegate to the Commissioner such powers as it may deem fit. (4) The State Government may appoint such numbers of Inspectors of Commercial Taxes as may be necessary to assist any of the authorities appointed under sub-section (1); and the Inspectors so appointed shall, within such areas and subject to such conditions and restrictions as may be specified in the order made in this behalf by the Commissioner, exercise such powers as may be conferred upon them. (5) All the persons appointed under sub-section (1) or sub-section (4) or section 86 shall be deemed to be a Public Servant within the meaning of section 21 of the Indian Penal Code, 1860 (XLV of 1860). (6) No person shall be entitled to call in question in any proceeding, any jurisdiction including the territorial jurisdiction of any of the officers or persons appointed under sub-section (1), after expiry of thirty days from the date of receipt by such person of any notice under this Ordinance issued by such officer or person. If within the period aforesaid, a separate application in writing raising an objection as to the jurisdiction of any such officer or person is made to him, the officer or person concerned shall refer the question to the Commissioner, who shall, after giving the person raising the objection, a reasonable opportunity of being heard, make an order determining the question. The order made by the Commissioner shall be final. (7) The Commissioner may, at any stage, direct transfer of a proceeding under section 27 or section 28 or section 31 or section 32 or section 33 or section 72 in respect of any dealer from the prescribed authority to another of the same or higher rank appointed under sub-section (1). Where such direction is given by the Commissioner the authority to whom the proceeding has been transferred shall proceed to dispose it of as if it had been initiated by the said authority, irrespective of the local limits of its

jurisdiction; such transfer shall not render necessary the re-issue of any notice already issued before the transfer and the authority to whom the proceeding is transferred may, in its discretion, continue it from the stage at which it was left by the authority from whom it was transferred. (8) The Commissioner may, from time to time, issue such orders, instructions and directions as he may deem fit, to the authorities subordinate to him for carrying out the purposes of this Ordinance, and such authorities shall observe and follow such orders, instructions and directions of the Commissioner. Provided that no such orders, instructions and directions shall be issued: (i) so as to require any authority to pass a particular order or to dispose of a particular case in a particular manner; or (ii) so as to interfere with the discretion of the Appellate authorities in a particular case. Provided further that if the Commissioner is of the opinion that it is necessary in the public interest so to do, he may cause such orders, instructions and directions to be published and circulated for general information. (9) Subject to such conditions and restrictions as may be prescribed, it shall be lawful for the Deputy Commissioner, or the Assistant Commissioner Incharge of the Circle to allot work and proceedings, for smooth functioning, amongst the officers posted in the Circle, and it may include transfer of a proceeding from one officer to another posted in the same office and exercising concurrent jurisdiction.

#### **11. Indemnity :-**

No suit, prosecution or other legal proceeding shall lie against any servant of the Government or any officer or authority appointed under section 10 or under section 86 of this Ordinance for anything which is in good faith done or intended to be done under this Ordinance or rules made thereunder.

#### **12. Power To Issue Summons And Examine On Oath :-**

(1) The Tribunal, the Commissioner or any officer or authority appointed under section 9 or 10, or section 86 shall, for carrying out the purposes of this Ordinance, have all the powers of a civil Court under the Code of Civil Procedure, 1908 (V of 1908) and in particular in respect of the following matters, namely: - (a) to summon and enforce attendance of any person, including any officer of a banking company, and examine him on oath or affirmation; (b) to compel the production of documents or accounts and to impound and retain them; (c) to issue commissions for the examination of witness. (2) Every proceeding under this Ordinance before the Tribunal, or the Commissioner or any officer or person

other than an Inspector appointed under section 10 of this Ordinance shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (XLV of 1860).

**13. Point Or Points In The Series Of Sales At Which The Sales Tax Shall Be Levied :-**

(1) Subject to the provisions of section 16 and section 17, tax on sale of goods shall be levied at each point in a series of sales in Bihar by a dealer liable to pay tax under this Ordinance. Provided that where the tax is levied at every point of sale the tax payable by a dealer at any point shall be the amount arrived at after deducting, in the manner prescribed, the input tax credit specified under section 16 or section 17 from the tax computed at that point of sale. (2) Notwithstanding anything contained in sub-section (1), the State Government may, by a notification published in the official Gazette, specify, in respect of petrol, diesel, natural gas and aviation turbine spirit that the sales tax shall be levied at the first point of their sale in Bihar by a dealer. (3) Where by a notification published under sub-section (2) the State Government specifies that the sales tax shall be levied at the first point of sale in Bihar by a dealer, subsequent sales in the state of the same goods shall not be levied to tax, if the dealer making the subsequent sale produces before the prescribed authority the original copy of the cash memo, or invoice or bill issued to him and files a true and complete declaration in the form and in the manner prescribed. Such declaration shall be issued by the selling dealer to the purchasing dealer not later than the 30th of April of the year following the year to which such sales relates.

**14. Rate Of Tax :-**

(1) Except for such goods as mentioned in Schedule II, Schedule III and Schedule IV, tax payable under section 3 or section 4 or section 5 shall be at the rate of 12.5 per centum of the sale price of the goods sold. (2) Goods specified in Schedule II and III shall be taxed at the rate of 1 per centum and 4 per centum respectively. (3) The State Government may, in relation to goods mentioned in Schedule IV, fix by notification and subject to such conditions and restrictions, such rate of tax, not exceeding 50 per centum but not below 20 per centum as may be specified in the notification. (4) The State Government may, in relation to goods mentioned in sub-section (2) of section 13, fix by notification such rate of tax not exceeding 40 per centum but not below 20 per centum as specified



in the notification. Provided that the State Government may, by notification, add to, amend or alter any Schedule to this Ordinance.

**15. Compounding Of Tax Liability In Certain Cases :-**

(1) Notwithstanding anything to the contrary contained in the Ordinance, the State Government may, by notification and subject to such conditions and restrictions as may be prescribed, permit any class of registered dealers whose gross turnover does not exceed the limit specified in the notification to pay, in lieu of the tax payable by him, an amount calculated at such rate, not exceeding four percent of his gross turnover, as may be specified in the notification issued in this behalf: Provided that no such permission shall be granted to a manufacturer or a person who imports any goods from any place outside the state for the purpose of his business. Provided further that the amount so specified shall be in addition to any tax that may be payable by the dealer under section 4. (2) Dealers to whom the provisions of sub section (1) apply shall (a) not charge any tax on the sale of goods specified in Schedule I; (b) not charge tax in excess of the rate specified in the notification issued under sub section (1); and (c) not be entitled to issue tax invoices in respect of sales effected by them. (3) If reasonable grounds exist to believe that the dealer was not eligible to pay tax at a fixed rate under sub section (1), the prescribed authority shall, without prejudice to any action which is or may be taken under section 81, impose a penalty equivalent to three times of the amount of tax arrived at after applying the rate specified under section 14 to the gross turnover of the dealer after deducting the value of sales under section 6. Provided that no order under this sub-section shall be passed without giving the dealer a reasonable opportunity of being heard.

**16. Input Tax Credit :-**

(1) An input tax credit as provided in this section shall be claimed by a registered dealer, subject to such conditions and restrictions as may be prescribed, on sales of goods in the circumstances specified below: - (a) when a registered dealer purchases any input within the State from another such dealer after paying him the tax as specified under section 14, he shall claim credit of the said input tax in the manner prescribed, if the goods are sold within the State or in the course of inter-State trade and commerce. (b) when a registered dealer- (i) purchases any input within the State from another such dealer after paying him the tax under section 14, or (ii) purchases any input and pays tax on such purchase under

section 4 of the Ordinance, and consumes such goods in the manufacture of any goods mentioned in sub-sections (1), (2) or (3) of section 14 of the Ordinance he shall claim credit of the said input tax in the manner prescribed, if the goods so manufactured are sold within the State or in the course of inter-State trade and commerce. Provided that if the claim for input tax credit under clauses (a) or (b) for any month exceeds the output tax for the same month, such excess shall be carried forward for adjustment against the output tax of subsequent months. In no case shall a refund of input tax be allowed. Provided further that no credit of input tax shall be allowed in respect of capital assets purchased or acquired before the commencement of this Ordinance. (2) Notwithstanding anything contained in sub-section (1), where a registered dealer purchases any input in the circumstances stated in clauses (a) or (b) of the said sub-section and,- (a) dispatches such goods or the goods manufactured by consuming such goods, to a commission agent registered under the Ordinance or transfers such goods to its branch or head office inside the State of Bihar for sale, as the case may be; or (b) supplies such goods in the course of execution of a works contract to another such dealer to whom he has let out a sub-contract, for use in the execution thereof; the input tax credit on the sale or supply, as the case may be, of such goods shall be claimed by the registered dealer selling the goods on commission or using the goods supplied in the execution of sub-contract, as the case may be, in accordance with the provisions of sub-section (1), in such manner as may be prescribed. (3) No input tax credit under sub-section (1) shall be claimed or be allowed to a registered dealer- (a) in respect of goods specified under sub section (2) of section 13; or (b) in respect of inputs purchased by him from another such dealer or manufactured by him and the right wherein to use is transferred to another dealer; or (c) in respect of inputs purchased from a registered dealer permitted to pay tax under the provisions of section 15; or (d) in respect of inputs consumed either for the manufacture of goods specified in Schedule I of this Ordinance or for the manufacture of goods disposed of in any manner other than by way of sale inside the State or sale in the course of inter-State trade and commerce under section 3 of the Central Sales Tax Act, 1956 or in the course of export outside the territory of India under section 5 of the Central Sales Tax Act, 1956; or (e) in respect of inputs purchased after payment of tax as specified under section 14 and disposed of in any manner other than by way of sale inside the State or sale in the course of inter-

State trade and commerce under section 3 of the Central Sales Tax Act, 1956 or in the course of export outside the territory of India under section 5 of the Central Sales Tax Act, 1956; or (f) in respect of goods used for self consumption or as gift. (4) In case the inputs or goods are used partially for the purpose specified in clause (d) or (e) of sub section (3), the claim for input tax credit shall stand reduced to the extent they are so used. (5) No dealer shall claim a input tax credit in respect of inputs purchased unless he is in possession of an original copy of the tax invoice, signed and issued by the selling registered dealer, containing the prescribed particulars of sale. If the original tax invoice is lost, input tax credit shall be allowed only on the basis of a duplicate copy of the original tax invoice in the form and manner prescribed.

### **17. Exports To Be Zero-Rated :-**

A sale specified under section 5 of the Central Sales Tax Act 1956 (Act 74 of 1956) by a dealer or an export oriented Unit, shall be zero-rated. In such cases there shall be no tax payable on the turnover of such sale and the person exporting the goods shall be entitled, in the manner prescribed, to a credit of input tax paid: (a) on the purchase of the goods sold in the course of export, or (b) on the purchase of inputs and capital assets which have been used for the manufacture of goods sold in the course of export. Provided that the input tax credit on account of capital assets shall be allowed only to the extent and in the manner prescribed. Explanation- For the purposes of this section all sale of inputs made to dealers in a Special Economic Zone outside the Customs territory of India shall also be zero-rated.

### **18. Rate Of Tax On Packing Materials And Containers :-**

Notwithstanding anything contained in Section 14, where any goods packed in any container or packing material are sold or purchased, the container or packing material in which such goods are so packed shall be deemed to have been sold or purchased along with such goods and the tax under Sections 3, 4, and 5 shall be levied on the sale or purchase of such container or packing material (whether such packing materials or containers are separately charged for or not) at the rate of tax applicable to the sale or the purchase, as the case may be, of such goods: Provided that where the price of the goods is less than the container or packing material in which they are packed, the rate of tax specified in respect of such containers under sub-section (1) of section 14 shall apply.

## **19. Registration :-**

(1) No person liable to pay tax under section 3 or section 4, as the case may be, of this Ordinance shall carry on business as a dealer unless he has obtained and is in possession of a valid registration certificate in respect of every place of business at which goods are either purchased or sold. Provided that the Commissioner, in such special circumstances and subject to such conditions and restrictions as may be prescribed, may direct a person to be registered in a Circle to be specified by the Commissioner in such order. (2) Notwithstanding anything contained in sub section (1), any dealer not liable to pay tax under the Ordinance may apply for and be granted a certificate of registration in the manner prescribed. (3) Every person, required by sub-section (1) to be in possession of a valid registration certificate, shall apply for the same in the prescribed manner to the prescribed authority; and a registration certificate, in the prescribed manner and in the prescribed form, shall be granted to the applicant upon the satisfaction of the prescribed authority that the application is in order: Provided that dealers registered under the earlier law may be granted a registration certificate, in the manner prescribed, without having to apply for it. Provided further that no application referred to in this sub-section shall be considered and be deemed valid, unless the applicant furnishes correctly all the prescribed particulars and such other particulars as may be required to be furnished in this behalf. Provided also that a dealer, dealing exclusively in goods mentioned in Schedule I, shall not be liable for registration. (4) Notwithstanding anything contained in sub-sections (1) and (2), every dealer registered under sub-section (1) of Section 7 of the Central Sales Tax Ordinance, 1956, shall get himself registered irrespective of his being liable to pay tax under this Ordinance. (5) The prescribed authority, without prejudice to any action that may be taken under section 28 or under section 81, shall register a person who is found to be liable to pay tax under this Ordinance but has failed to get himself registered in the manner prescribed. Provided that if the dealer files an appeal, application for revision, or review, pleading that he is not liable to pay tax under this Ordinance, no registration certificate shall be granted to him till his liability is finally determined, or accepted by the dealer, whichever is earlier. (6) Where any person applies for registration pursuant to sub-section (3), the prescribed authority shall grant him a temporary registration certificate within a period of three days from receipt of such application and such person shall

be deemed to be in possession of a valid certificate of registration from the date he so applies for the purposes of performing all the duties and bearing all liabilities under this Ordinance and the rules made thereunder. (7) After issue of the temporary registration certificate on application referred to in sub-section (6), the prescribed authority may require the applicant to produce before him evidence and documents in respect of the particulars given in the application as also the accounts relating to business, for verification. On production of such evidences, documents and accounts and on being satisfied about the correctness of the particulars, the prescribed authority shall issue to the applicant a permanent registration certificate along with Taxpayer Identification Number in the form and manner prescribed. (8) Where the prescribed authority is satisfied that an application for registration does not meet the requirements of this Ordinance, or the particulars given in the application are incorrect or the applicant has suppressed or misrepresented certain facts, he shall, after giving the applicant an opportunity of being heard, and after recording reasons therefor, reject the application and cancel from the date of its issue the temporary registration certificate issued to the applicant under sub-section (6) not later than ninety days of the date of receipt of application. (9) The Commissioner shall, by such date, as he may deem fit, notify in the Official Gazette a list of all registered dealers and may amend the list from time to time. Any registered dealer may make an application in the prescribed form to the prescribed authority for a certified copy or any extract therefrom and thereupon the prescribed authority shall furnish the copy of the list or the extract therefrom to the applicant dealer.

## **20. Amendment And Cancellation Of Registration Certificate**

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( 1 ) The prescribed authority may, after considering such information as may be furnished by the dealer under section 23 or as may otherwise be received by the said authority, amend the registration certificate of the dealer in respect of whom the information has been furnished or received. (2) When- (a) any registered dealer discontinues or entirely transfers his business to other persons; or (b) the liability of a registered dealer under this Ordinance has ceased under sub-section (4) of section 3; the dealer shall, forthwith, surrender his registration certificate in the manner prescribed to the prescribed authority and the said authority shall cancel the registration certificate in the manner prescribed.

Provided that, in a case covered by clause (a), the registration certificate shall be deemed to be inoperative with effect from the date of discontinuance or transfer of the business and, in a case covered by clause (b), with effect from the date on which the dealers liability to pay tax has ceased.

### **21. Security :-**

Where it appears necessary to the prescribed authority so to do for the proper realisation of the tax payable under this Ordinance, he may, in case of a dealer who imports any goods from any place outside the state for the purpose of his business, by an order in writing and for reasons to be recorded therein, impose a condition, for the issue of any declaration to him, to the effect that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order, such security as may be specified.

### **22. Declared Manager :-**

(1) Every dealer, who is liable to pay tax under this Ordinance, and who is a Hindu undivided family, a firm, company or corporation or a society, club or association or who is engaged in business as a guardian or a trustee or otherwise on behalf of another person, shall furnish to the prescribed authority in the prescribed manner a declaration stating the name and prescribed particulars of the person or persons who shall be deemed to be the manager or managers of such dealers business for the purposes of this Ordinance. (2) Such manager or managers or any person authorised by the manager or the dealer in this behalf shall be authorised to receive any form of declaration and any statement made, return furnished, accounts, registers or documents produced or evidence given by the manager or any person authorised by him or by the dealer in this behalf, in the course of any proceeding under this Ordinance, shall be binding on the dealer.

### **23. Furnishing Of Information By Dealers :-**

(1) If any person or dealer liable to pay tax under this Ordinance- (a) transfers or otherwise disposes of his business or any part thereof, whether by way of sale or otherwise, or (b) acquires any business or part of any business, whether by way of purchase or otherwise, or (c) effects any other change in the ownership or constitution of the business, or (d) discontinues his business, or shifts his place of business, or (e) changes the name, style or nature of his business or effects any change in the class or description of goods dealt in by him, or (f) starts a new business or

joins another business either singly or jointly with other person or persons, or (g) effects any change in the particulars furnished in an application under section 19 or declaration furnished under section 22, or (h) applies for or has an application made against him for insolvency or liquidation under any law for the time being in force, (i) makes a reference or has a reference made under the Sick Industrial Companies Special Provisions Act, 1985, he shall, within seven days of the occurring of any of the events aforesaid, inform the prescribed authority accordingly, and, if any such dealer dies without doing so, his executor, administrator, successor-in-interest or legal representative, as the case may be, shall, within fifteen days of the dealers death, inform the said authority accordingly. (2) Where any dealer liable to pay tax under this Ordinance- (a) being a firm, a Hindu undivided family or an association of persons effects a change in the constitution of such firm, Hindu undivided family or association, either by way of dissolution or disruption, or otherwise, then every person who was partner, karta or a member of such firm, Hindu undivided family or association, or (b) transfers or otherwise disposes of his business in the circumstances mentioned in sub-section (1) of section 63, then the person to whom the business is so transferred, shall, within seven days of the occurring of any of the events aforesaid, inform the prescribed authority accordingly, in the like manner.

#### **24. Returns, Payment Of Tax, Interest And Penalty :-**

(1) Every such dealer as may be required so to do by the prescribed authority, by notice served in the manner prescribed and every registered dealer, other than a dealer required by section 15 to pay tax at a fixed rate in lieu of the tax payable by him, shall furnish a true and complete return in respect of all his transactions relating to sales, purchases, receipts and dispatches of goods and any other transactions prescribed specifically for each month, on or before the end of the next following month to the prescribed authority in such form and in such manner as may be prescribed. (2) Every such dealer as may be required so to do by the prescribed authority, by notice served in the manner prescribed and every registered dealer, other than a dealer required by section 15 to pay tax at a fixed rate in lieu of the tax payable by him, shall furnish a true and complete statement in respect of all his transactions relating to sales and purchases of goods for each completed quarter on or before the end of the month following the end of the quarter to the prescribed authority in such form and in

such manner as may be prescribed. (3) Every registered dealer shall furnish to the prescribed authority, on or before the due date, a true and complete return in respect of every financial year in the form and manner prescribed. Explanation- In this sub-section, "due date" means - (i). where the dealer is a company within the meaning of the Companies Act, 1956 (Act 1 of 1956), the 30th day of November of the year following the year to which such return relates; (ii). where the dealer is a person, other than a company,- (a) in a case where the accounts of the dealer are required under this Ordinance or any other law to be audited or where the report of an accountant is required to be furnished under section 55, the 31st day of October of the year following the year to which such return relates; (b) in any other case, 31st day of July of the year following the year to which such return relates. (4) Every dealer required by section 15 to pay tax at a fixed rate in lieu of the tax payable by him shall file a quarterly abstract statement for each completed quarter on or before the end of the month following the end of the quarter to the prescribed authority in such form and in such manner as may be prescribed. (5) If the last day prescribed for the filing of quarterly statement or monthly return happens to be a holiday, the next date on which the office opens shall be deemed to be the last day. (6) Notwithstanding anything contained in sub-section (1) or (2) the prescribed authority may, for specific reasons to be recorded in writing, extend the date of filing such return or quarterly statement, as the case may be, subject to the condition that such an extension may be allowed only once and for a period not exceeding thirty days from the due date; but the Commissioner may allow extension beyond thirty days for reasons to be recorded in writing subject to the condition that such an extension may be allowed only once and that also for a period not exceeding three months. (7) If a dealer having furnished a monthly return under sub-section (1) or the quarterly statement under sub-section (2), discovers any omission or wrong statement therein, he may furnish a revised return or statement, as the case may be, in the form and manner prescribed to the prescribed authority at any time before the due date within the meaning of sub-section (3). Provided that no such return or statement shall be taken into consideration if, upon information or otherwise and for reasons to be recorded in writing, the prescribed authority is satisfied that the return or statement originally furnished was deliberately false or that it was furnished with intent to defraud the State Government of its revenue. (8) If a dealer fails to furnish the return under sub



section (1) or the quarterly statement under sub section (2), within the time prescribed in this regard, the prescribed authority shall, after giving such a dealer an opportunity of being heard in the manner prescribed, impose a penalty at the rate of twenty-five rupees for every day of default after the due or extended date, as the case may be. (9) (a) Every dealer liable to furnish the return under sub-section (1) shall deposit the tax payable, according to the return on or before the fifteenth day of the following month in such manner as may be prescribed and shall enclose the proof of payment in the form and manner prescribed along with the return. (b) Every dealer required by section 15 to pay tax at a fixed rate in lieu of the tax payable by him shall deposit the tax, arrived at after applying the rate specified in the notification issued under section 15 to his quarterly turnover, on or before the fifteenth day of the month following the quarter to which it relates and shall enclose the proof of payment in the form and manner prescribed along with the statement required to be furnished under sub-section (4). (c) If any registered dealer submits a revised return under sub section (6) and if the amount of tax due from such dealer according to the revised return is higher than the amount which was due according to the original return, such revised return shall be accompanied by a receipt showing the payment of extra amount of tax in the manner provided in clause (a). (10) If a dealer required to furnish the return under sub-section (1) or statement under sub-section (4) fails to pay the amount of tax payable according to the provisions of sub-section (9), such dealer shall be liable to pay interest in respect of:- (a) tax payable under sub-section (9), by him according to the return or the quarterly abstract statement or revised return, as the case may be; or (b) the tax payable for the period for which he has failed to furnish returns under sub section (1) or quarterly abstract statement under sub-section (4). at the rate of one and a half percentum per month of the amount due from the date the tax so payable had become due to the date of its payment. Explanation:- For the purpose of this sub-section- (i). Where the period of default covers a period less than a month, the interest payable in respect of such period shall be computed proportionately. (ii). "Month" shall mean thirty days. (11) If any registered dealer fails to make payment of tax under sub-section (9) or fails to make payment of amount of interest under sub-section (10) in the manner prescribed, the prescribed authority, after allowing such a dealer an opportunity of being heard in the manner prescribed, and in addition to the tax payable or paid and

the interest payable by him, shall impose by way of penalty a sum equal to five percentum per month of the amount due from the date such interest had become due to the date of its payment. (12) Any interest levied or penalty imposed under this section shall be without prejudice to any action, which is or may be taken under section 81 of this Ordinance. (13) A rebate at the rate of half per centum of the amount of tax admitted to be due in the return furnished under sub-section (1) subject to a maximum of Rs. 50000 in a year shall be allowed to a registered dealer who has furnished the return within the due date laid down in the said sub-section and has paid such amount in full on or before the due date.

## **25. Scrutiny Of Returns :-**

(1) The prescribed authority shall, within the time and in the manner prescribed, scrutinize every return filed under sub-sections (1) and (3) of section 24 for the purpose of ascertaining that- (a) all calculations contained therein are arithmetically accurate; (b) the output tax, the input tax, the tax payable and interest payable, if any, have been computed correctly and properly; (c) tax rates have been applied correctly; and (d) evidence, as prescribed, has been furnished with regard to payment of tax and interest payable, if any. (2) If, upon scrutiny under sub-section (1), the prescribed authority discovers any error, he shall serve a notice in the prescribed form on the dealer directing him to- (a) either pay, within seven days, the extra amount of tax along with the interest, if any, payable and furnish the challan evidencing such payment; (b) or to explain, within seven days, that the return or returns filed by him do not suffer from the infirmities mentioned in sub-section (1). (3)(a) The prescribed authority shall, in a case falling under clause (b) of sub-section (2) and after giving the dealer a reasonable opportunity to adduce necessary evidence, pass such order in the matter as may be deemed fit. (b) If, pursuant to an order under clause (a), any sum is found to be payable, a notice in the form and manner prescribed, shall be served upon the dealer requiring him to pay the tax and interest forthwith. (c) Any tax or interest payable under clause (b) shall be deemed to be an arrear of tax within the meaning of section 39 of the Ordinance.

## **26. Self-Assessment Of Tax :-**

(1) Subject to the provisions of section 25, the tax due in respect of a financial year from every registered dealer who has furnished the return and statement mentioned in section 24 shall be deemed to have been assessed. (2) Notwithstanding anything contained in

sub-section (1), the Commissioner may select any registered dealer for detailed audit on the basis of a selection model incorporating such criteria as may be deemed fit by the Commissioner. (3) The audit of a dealer selected under sub-section (2) shall be conducted, in the manner prescribed, within a period of twenty four months from the due date within the meaning of sub-section (3) of section 24.

**27. Assessment Of Dealer Not Filing Return :-**

(1) If a registered dealer does not furnish before the due date specified under sub-section (3) of section 24- (a) the returns specified under sub-section (1) or sub-section (3) of section 24; or (b) the quarterly abstract statement under sub-section (4) of section 24; or (c) the statement under sub section (2) of section 24; the prescribed authority shall, after giving the dealer a reasonable opportunity of being heard, assess to the best of its judgment, the amount of tax due from the dealer. (2) Any assessment made, interest levied or penalty imposed under this section shall be without prejudice to any action, which is or may be taken under section 81.

**28. Assessment Of Tax Of Dealers Evading Registration :-**

(1) If the Prescribed authority is satisfied that reasonable grounds exist to believe that any dealer has been liable to pay tax under this Ordinance in respect of any period, and has nevertheless failed to apply for a registration certificate, or, having so applied, failed to furnish any particulars or information required for the purposes of Section 19, the prescribed authority shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of its judgment, the amount of tax due from the dealer in respect of such period and all subsequent periods; and the prescribed authority may, without prejudice to any action that is or may be taken under section 81, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum of one hundred rupees for every day of the period during which the dealer failed to apply for registration or failed to furnish any particulars of information required for purposes of Section 19 or an amount equal to the amount of tax assessed, whichever is greater. Provided that no proceeding for such assessment shall be initiated except before the expiry of two years from the expiry of the period to which it relates. Provided further that a proceeding initiated under this sub-section shall be completed within a period of four years from the date of initiation. (2) Any assessment made, interest levied or

penalty imposed under this section shall be without prejudice to any action which is or may be taken under section 81.

**29. Assessment Of Tax On Disputed Question :-**

(1) Notwithstanding anything contained in any other provision of this Ordinance, where the assessment involves a decision on a point which is concluded against the State by a judgment of the Tribunal and the prescribed authority has initiated any proceedings against such judgment before an appropriate forum, then the prescribed authority may complete the assessment as if the point was not so decided against the State, but shall stay the recovery of such of the dues including tax, penalty, interest or amount forfeited, if any, in so far as they relate to such point, until the decision by the appropriate forum and after such decision, may modify the assessment order, if found necessary, after giving the dealer a reasonable opportunity of being heard.

**30. Assessment Of Tax Of Non-Resident Dealer Doing Business Temporarily By Way Of Fair, Mela, Etc :-**

(1) Notwithstanding any thing contained in section 19, or section 26 and subject to such rules as may be prescribed, it shall be open to the prescribed authority or any other officer authorized by the Commissioner in this behalf to make provisional or final assessment of turnover of sale or purchase of goods, as the case may be, effected by any non-resident dealer carrying on business temporarily by way of fair, mela or any other similar means. (2) If a non-resident dealer claims that the sales affected by him are not of goods imported by him, the onus to prove such claim shall lie on the claimant.

**31. Assessment Or Re-Assessment Of Tax Of Escaped Turnover :-**

(1) If the prescribed authority is satisfied, either on the basis of audit conducted under sub-section (3) of section 26 or otherwise, that reasonable grounds exist to believe that, in respect of any assessment under this Ordinance or under the earlier law during any period, any sale or purchases of goods liable to tax under this Ordinance or the earlier law, for any reason, has been under-assessed or has escaped assessment, or has been assessed to tax at a lower rate, or any deduction therefrom has been wrongly made, or an input tax credit has incorrectly been claimed, the prescribed authority shall, in such manner as may be prescribed and after serving on the dealer a notice in the form and in the

manner prescribed, proceed to assess or re-assess, as the case may be, the tax payable by such dealer within four years from the expiry of the year during which the original order of assessment or re-assessment was passed, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under section 27. Provided that the amount of tax shall be assessed or re-assessed after allowing such deductions as were permissible during the said period and at rates at which it would have been assessed had the turnover not escaped assessment. Explanation:- Production before the prescribed authority of records, accounts, registers or documents from which material facts could, with due diligence, have been discovered by the said authority, will not necessarily amount to full disclosure within the meaning of this section. (2) (a) The prescribed authority shall direct that the dealer shall, besides the amount of interest payable under sub-section (9) of section 24, pay by way of penalty a sum equal to three times the amount of tax which is or may be assessed on the escaped turnover. (b) The penalty imposed under clause (a) shall be in addition to the amount of tax, which is or may be assessed on the escaped turnover (3) Any assessment or re-assessment made and any penalty imposed under this section shall be without prejudice to any action, which is or may be taken under section 81.

### **32. Escaped Turnover Detected Before Or At The Time Of Assessment Of Tax :-**

(1) If the prescribed authority is satisfied that any registered dealer - (a) has concealed any sales or purchases or any particulars thereof, with a view to reduce the amount of tax payable by him under this Ordinance; or (b) has furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return furnished under sub-section (1) of section 24 or quarterly statement under sub-section (2) of section 24 or quarterly abstract statement under sub-section (3) of section 24; or (c) has claimed input tax credit in excess of what he is entitled to, the prescribed authority shall, after giving such a dealer an opportunity of being heard in the manner prescribed, by an order in writing direct that he shall, besides the amount of interest payable under sub-section (9) of section 24 and in addition to any tax which may be determined to be payable by him under the Ordinance, pay by way

of penalty, a sum equal to three times the amount of tax on the suppressed turnover or on concealed or incorrect particulars or rebate claimed in excess. (2) The penalty under sub-section (1) may be imposed before completion of assessment, and for determining the amount of penalty, the prescribed authority may quantify the amount of tax provisionally in the prescribed manner. (3) Any penalty imposed under sub-section (1) shall be without prejudice to any action, which is or may be taken under section 81.

### **33. Assessment Of Tax Based On Audit Objections :-**

Where an objection has been made by the Comptroller and Auditor General respect of an assessment under section 26 or section 27 or section 28 or section 29 or section 30 or section 31 or section 32, the prescribed authority shall proceed to re-assess the dealer with respect to whose assessment the objection has been made in the manner prescribed. Provided that if the objection involves a point of law, no re-assessment shall be made unless the prescribed authority is satisfied that such objection is lawful. If the prescribed authority, for reasons to be recorded in writing, differs from the audit objection he shall refer the question of law involved to the Commissioner and the decision of the Commissioner shall be final. Provided further that no order under this section shall be passed without giving the dealer an opportunity of being heard.

### **34. Assessment Of Tax Proceedings Etc., Not To Be Invalid On Certain Grounds :-**

No assessment or other proceedings made or purporting to be made, issued or executed under this Ordinance shall be (a) quashed or deemed to be void for want of form; or (b) affected by reason of mistake, defect or omission therein, if it is, in substance and effect, in conformity with this Ordinance and the dealer or person assessed, or intended to be assessed or affected by the proceeding is designated in it according to the common understanding.

### **35. Taxable Turnover :-**

(1) For the purpose of this Ordinance the taxable turnover means the turnover on which a dealer shall be liable to pay tax after making such deductions from his total turnover in such manner as may be prescribed. (2) Where a dealer claims that he is not liable to pay tax on any part of his gross turnover in respect of any goods by reasons of transfer of such goods by him to any other dealer or to his agent or to his principal, as the case may be, for sale the

burden of proving such claim shall be on the dealer and for this purpose along with other evidences as may be prescribed, he shall furnish before the prescribed authority a declaration in a form and in the manner prescribed.

**36. Tax Payable By A Dealer :-**

(1) The tax payable by a dealer shall be calculated according to the following formula:  $T = A - B$  Where- T is the tax payable by the dealer, A is the output tax under this Ordinance, and B is the total amount of input tax credit allowable to the dealer under section 16 or section 17.

**37. Time Limit For Completion Of Proceeding Of Assessment Of Tax :-**

Except for a proceeding under sub-section (2) of section 26, section 28 and sub-section (1) of section 31, no proceeding for assessment of tax payable by a dealer under this Ordinance in respect of any period shall be initiated and completed except before the expiry of two years from the expiry of such period: Provided that a proceeding for re-assessment in pursuance of or as a result of an order on appeal, revision and reference or review shall be initiated and completed before the expiry of one year from the expiry of the year during which such order was communicated to the assessing authority. Provided that the Commissioner on being satisfied that it is necessary so to do and for reasons to be recorded in writing, may extend the period of initiation and completion in any particular case and such extension shall not ordinarily exceed two years.

**38. Exclusion Of Time In Assessment Tax Proceedings :-**

In computing the period of limitation prescribed for assessment or re-assessment as the case may, under sections 27, 28, 29, 30, 31, 32 or section 33, the time during which any assessment or re-assessment proceedings remained stayed under the order of any competent court shall be excluded.

**39. Payment And Recovery Of Tax :-**

(1) The tax payable under this Ordinance shall be paid in the manner hereinafter provided. (2) The amount of - (i) tax estimated in advance under sub-section (9) of section 3, or (ii) tax due according to the returns filed by the dealer where full payment of such amount has not been made, or (iii) tax assessed or re-assessed under section 26, section 27, section 28, section 29, section 30, section 31, section 32 or section 33 or in pursuance of or as a result of an order on appeal, revision or review, less the

sum, if any, already paid by the dealer, or (iv) interest chargeable or penalty imposed, if any, under any of the provisions of this Ordinance, shall be paid by the dealer or the person concerned into a Government Treasury or a Bank authorized in this behalf by the State Government, or in such other manner as may be prescribed and by such date as may be specified in a notice issued by the prescribed authority for this purpose and the date to be specified shall, ordinarily, not be less than thirty days from the date of service of such notice: Provided that the authority may, in respect of any particular dealer or a person, and, for reasons to be recorded in writing, extend the date of such payment, or allow such dealer to pay tax or interest due and the penalty, if any, by installments in the manner prescribed. Provided further that where the prescribed authority considers it expedient in the interest of state revenue, it may, for reasons to be recorded in writing, require any dealer, or person, to make such payments forthwith. (3) If a dealer or a person fails to make payment of any amount of tax by the period specified in the notice issued under sub-section (2) or fails to make payment of tax by the date extended or has defaulted in making payment of installments under the first proviso of the said sub-section, the dealer shall, for such failure or default, pay, in addition to the amount of tax, an amount by way of simple interest calculated at the rate of one and a half percentum for each calendar month or part thereof on the amount of such tax. (4) Where, in course of any proceeding, the prescribed authority finds that any dealer has: (i) wrongly claimed either the whole or part of his turnover as not taxable and, has consequently, paid lesser amount of tax, or (ii) wrongly declared his turnover or any particulars thereof and thereby has reduced the amount of tax payable under this Ordinance, or (iii) wrongly claimed input tax credit in excess of what he is entitled to under this Ordinance; the dealer shall pay, in addition to the amount of tax assessed under any proceeding as aforesaid, simple interest at the rate of one and half percentum for each calendar month or part thereof on the difference of the amount previously admitted and tax finally assessed from the date the tax would have been payable had the dealer not committed any of the acts mentioned in clauses (i), (ii) or (iii). Provided that where recovery of tax or any part thereof assessed under any proceeding under this Ordinance is stayed as a result of an order on appeal or by any competent court, the amount of such interest shall be recoverable after the final order is passed and such order is confirmed from the date the tax first became due.



(5) If a dealer or a person has failed, without reasonable cause, to make payment of any amount of tax by the date specified in the notice issued under sub-section (2) or forthwith as required by the second proviso thereto, or in like manner has failed to make payment of tax and interest by the date extended under the first proviso of the said sub-section or has defaulted in payment of installments or has not paid the amount of interest due, the prescribed authority, after giving the dealer a reasonable opportunity of being heard, may direct that the dealer shall pay, in the prescribed manner, by way of penalty for such failure, an amount which shall be five per centum per month of the amount payable following the expiry of such date for each subsequent month and part thereof.

#### **40. Advance Recovery Of Tax On Sales And Supplies To Governments And Other Persons :-**

(1) Notwithstanding anything contained in this Ordinance but subject to the provisions of section 6, any person responsible for paying sale price or any amount purporting to be the full or part payment of sale price in respect of sales or supplies of taxable goods exceeding rupees two lac fifty thousands during a year made to- (i) the State Government; or (ii) Central Government; or (iii) a Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled either wholly or partly by the State Government or the Central Government shall, at the time of payment, subject to such conditions and restrictions as may be prescribed, deduct an amount at the rate as may be specified by the State Government by a notification on account of tax on the amount of such payment: Provided that the rate or rates to be specified by the State Government shall not be more than the rate of tax applicable to the goods sold or supplied. (2) Notwithstanding any law or contract to the contrary, the person making such deduction shall be lawfully competent to make such deduction. (3) Payment of the amount deducted under sub-section (1) into the Government Treasury in the prescribed manner, shall be the liability of the person making such deduction. (4) Payment of the amount deducted under sub-section (1) into the Government Treasury by the person making the deduction shall be deemed to be a payment by or on behalf of the seller or supplier concerned. (5) If any person contravenes any or all of the provisions of sub-section (1), (2) or (3), he shall be liable to pay, by way of penalty, a sum not exceeding twice the amount of tax deductible under sub-

section (1): Provided that such penalty shall not be imposed unless the person contravening the provisions is given an opportunity of being heard by the prescribed authority. (6) The provisions of section 39 and 47 for recovery of any amount of tax due from a dealer shall, mutatis mutandis, apply for recovery of any amount of tax deducted and or any penalty imposed but not deposited under this section. Explanation:- A "person" in this section includes all officers or authorities who are competent or authorised to make payment of the sale-price in respect of sales to State Government or Central Government or to Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled wholly or partly by the State Government or the Central Government. (7) The provisions of sub-sections (5) of section 41 of the Ordinance shall, mutatis mutandis, apply, so far as it relates, to issuance of certificate to person from whose bills deduction has been made and for filing of quarterly statements.

**41. Advance Recovery Of Tax From Works Contractors :-**

(1) Notwithstanding anything contained in section 43 but subject to the provisions of section 6, every person, responsible for making any payment in discharge of any liability on account of valuable consideration payable in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be lawfully competent to deduct an amount at the rate or rates, not exceeding four percentum, to be specified by the State Government, in a notification published in the Official Gazette, purporting to be a part or full amount of tax payable on the sale of such goods from every bill or invoice raised by the works contractor as payable by the person and no such payment or discharge of any such bill or invoice raised by a works contractor shall be made without deduction as aforesaid. Explanation:- "Person" in this section includes all officers and authorities of the Central or State Government or of a Company, Corporation, Board, Authority, Co-operative Societies, Undertaking or any other body constituted or formed under any Ordinance and of any firm or association of persons and organisation. Provided that, the State Government may prescribe the conditions subject to which no such deductions shall be made. (2) No such payment or discharge of any bill or invoice raised in respect of transfer of property in goods (whether as goods or in some other form) by a works contractor shall be made without the deduction referred to in sub-section (1): Provided that no deduction under sub section (1)

shall be made where the payment is made as advance prior to the commencement of the execution of such works contract until it forms part of the sale price payable for transfer of property in goods (whether as goods or in some other form); Provided further that no deduction under sub section (1) shall be made from the payment or any part thereof where: (i) The payment or any part thereof does not relate to any transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract; (ii) Where the dealer produces a certificate issued by the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer, in charge of the concerned Circle to the effect that the payment or any part thereof relates to such transfer of property in goods (whether as goods or in some other form) on which he has no further liability to pay tax in terms of the provisions of section 15 of the Central Sales Tax Act, 1956; (iii) Where the dealer produces a certificate issued by the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer, in charge of the concerned Circle to the effect that the payment or any part thereof relates to such transfer of property in goods (whether as goods or in some other form) on which he has no liability to pay tax in terms of the provisions of section 6 of this Ordinance. (3) The amount deducted under sub-section (1) shall be adjusted against the amount of tax finally assessed or determined as being payable by the concerned works contractor and any amount deducted in excess of the tax so assessed or determined shall be refunded in accordance with the provisions of the Ordinance. (4) The deduction referred to in sub-section (1) shall be made in the manner prescribed. (5) The person making the deduction shall issue a certificate in the form and manner prescribed, containing such particulars as may be required to be mentioned therein, to the works contractor or person from whose bill or invoice such deduction has been made and such certificate shall be deemed to be a valid discharge of liability in terms of provisions of sub-section (9) of section 24 to the extent of amount of deduction made under sub-section (1). (6) If any person contravenes any or all of the provisions of sub-sections (1), (2), (3), (4) and (5), the prescribed authority shall, after giving a reasonable opportunity of being heard, by order in writing direct that such person shall pay by way of penalty, a sum not exceeding twice the amount of tax deductible or deducted and not deposited in Government Treasury in the manner prescribed. (7) The

provisions of section 39 and 47 shall, mutatis mutandis, apply for recovery of any amount of tax deducted but not deposited into the Government Treasury or any penalty imposed under this section.

#### **42. Production Of Tax Clearance Certificate :-**

Notwithstanding anything contained in any law for the time being in force, no person shall be awarded by- (i) the State Government; or (ii) the Central Government; or (iii) by a Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled either wholly or partly by the State Government or the Central Government any contract involving sale or supply of goods and no person shall be granted any license to carry on any trade or commerce unless he produces before the principal or licensing authority, as the case may be, a certificate, granted by the prescribed authority in the form and manner prescribed, to the effect that the prescribed authority has no objection to the awarding of such contract or the granting of such license to the person concerned. Provided that no such certificate shall be granted to any person who is not a registered dealer under this Ordinance or, being a registered dealer, has defaulted in the payment of any tax, penalty or interest due under this Ordinance. Provided further that if a person not liable to tax under this Ordinance applies for the grant of certificate under this section and in whose case the value of the contract or, as the case may be, the anticipated turnover in the succeeding twelve months exceeds the limit specified in sub section (1) or sub section (2) of section 3, he shall be granted such certificate subject to the condition that he furnishes, before the prescribed authority, an undertaking to the effect that he shall apply for registration in the manner and within the period prescribed. In the event of the violation of such undertaking the principal shall terminate the contract awarded to the person.

#### **43. Restriction On Collection Of Tax By Dealers :-**

(1) No person who is not a registered dealer shall collect from any person any amount, by whatever name or description it may be called, towards or purporting to be tax on sale of goods. (2) No registered dealer shall collect from any person any such amount exceeding the amount arrived at after applying the rate of tax specified under section 14 to the sale price of the goods sold. (3) If any person or a registered dealer contravenes the provisions of sub-section (1) or sub-section (2) the prescribed authority shall, after giving an opportunity of being heard in the manner

prescribed, by an order in writing direct that such person or registered dealer shall pay by way of penalty a sum equal to twice the amount collected in contravention of the provisions of the sub-sections (1) and (2).

#### **44. Forfeiture Of Tax Collected In Violation Of This Ordinance :-**

(1) Any amount collected by any person in contravention of the provisions of sub-section (1) or sub-section (2) of section 43 or any amount collected by any person by way of tax, by whatever name called, or in any other manner not payable under any provision of this Ordinance shall be liable to forfeiture to the State Government.

(2) If the Prescribed authority, in the course of any proceeding under this Ordinance or otherwise, has reason to believe that any amount is liable for forfeiture under sub-section (1) he shall serve, on the person who has collected such amount, a notice in the prescribed form requiring to show cause why the said amount should not be forfeited to the State Government and on receipt of the reply, if any, and after making such inquiries as may be deemed fit, he shall make an order of forfeiture if the amount is found so liable. (3) Where an order of forfeiture under sub-section (2) has been made, the person making the unauthorized collection shall forthwith pay the amount so forfeited to the State Government, if it has not already been paid and on his failure to do so, such amount shall be recoverable from him as if it were a tax due from him. (4) Where an order for forfeiture is passed, the Commissioner shall publish or cause to be published, in the prescribed manner, a notice for information of the persons from whom the amount so forfeited had been collected giving such details as may be prescribed. (5) On the publication of the notice under sub-section (4) a refund of such amount or part thereof may be claimed from the State Government within one year from the date of publication of the said notice by the person from whom it was unauthorisedly realised by way of tax and for this purpose the person claiming the refund shall make an application in the prescribed form. (6) On receipt of an application under sub-section (6) the Commissioner shall hold such enquiry as he deems fit and if he is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid to the State Government and no refund or remission in respect of that amount was granted, the Commissioner shall refund such amount or any part thereof to the person concerned. (7) Notwithstanding anything

contained in this Ordinance or in any other law for the time being in force, where any amount collected by any person is forfeited to the State Government under this Section, such forfeiture shall, if the amount forfeited has been paid to the State Government, discharge him of the liability to refund the amount to the person from whom it was so collected.

**45. Rounding Off Of Tax Liability :-**

Any tax, interest or penalty payable under this Ordinance shall be rounded off to the nearest ten rupees and shall be paid accordingly.

**46. Recovery Of Tax As Arrears Of Land Revenue :-**

(1) The authority appointed under section 10 shall, for the purpose of recovery of tax, interest and penalty under this Ordinance, have the same powers as are vested in the certificate officer under the Bihar and Orissa Public Demand Recovery Act 1914 (Act IV of 1914) (2) Any proceeding under sub-section (1) of this section before any authority appointed under section 10 shall be deemed to be a proceeding for recovery of the public demand under the Bihar and Orissa Public Demands Recovery Act, 1914 and all provisions of the said Ordinance for recovery, attachment, sale, arrest shall mutatis mutandis apply.

**47. Special Mode Of Recovery Of Tax And Other Liabilities Under The Ordinance :-**

(1) Notwithstanding anything contained in Section 39 or any law or contract to the contrary, the prescribed authority may, at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the said authority) direct- (a) any person from whom any money is due or may become due to a dealer who has failed to comply with a notice of demand served under Section 39, or (b) any person who holds or may subsequently hold any money for or on account of such dealer, to pay into Government treasury, in the manner specified in the notice issued under this sub-section, either forthwith or 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 it is held) so much of the money as is sufficient to pay the amount of tax due from the dealer, together with interest and penalty, if any under this Ordinance or the whole of the money when it is equal to or less than that amount. (2) The authority issuing a notice under sub-section (1) may at any time or from time to time amend or revoke any such notice or extend the time for making

any payment in pursuance of the notice. (3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt. (4) Any person discharging any liability to the dealer after service on him of the notice issued under sub-section (1) shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax, interest and penalty, whichever is less. (5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the authority which issued the notice that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the dealer or be held for or on account of the dealer, nothing contained in this section shall be deemed to require such person to pay into the Government Treasury any such money or part thereof as the case may be. (6) If any person contravenes any of the provisions of sub-sections (1), (4) and (5) of this section, the prescribed authority shall after giving an opportunity of being heard by an order in writing direct that such person shall pay by way of penalty a sum not exceeding twice the amount payable under sub-section (1). (7) Any amount of money which a person is directed to pay under sub-section (1) or for which he is personally liable to the State Government under sub-section (4) shall, if it remains unpaid, be recoverable as an arrear of land revenue. (8) No action shall be taken under this section in respect of any amount of tax, interest and penalty, if any, the date of payment of which has been extended or the realization of which has been stayed, under this Ordinance during the period of such extension or stay. (9) The provisions of this Section shall be without prejudice to any action that may be taken for recovery of the arrears of tax, interest and penalty, if any, due from the dealer or person.

#### **48. Liability Of Surety :-**

The liability of a surety under this Ordinance shall be co-extensive, to the extent of the amount of security, with that of the defaulting dealer and all modes of recovery enforceable against the dealer shall be simultaneously enforceable against the surety by the

prescribed authority.

**49. Transfers To Defraud Revenue Void :-**

Where, during the pendency of any proceeding relating to assessment, re-assessment or recovery of any tax, interest or penalty payable under this Ordinance or the earlier law, any person or dealer creates a charge on or parts with the possession, by any mode of transfer whatsoever including sale, mortgage, gift or exchange, of any of his assets in favour of any person with the intention of defrauding the revenue, then, notwithstanding anything to the contrary contained in any Ordinance or contract, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of such proceeding or otherwise.

**50. Period Of Limitation For Recovery Of Tax :-**

Notwithstanding anything contained in any law for the time being in force, no proceeding for the purposes of sub-section (2) of section 39 or sub-section (1) of section 47 shall be initiated under this Ordinance except before the expiry of twelve years from the date of assessment: Provided that the period of limitation for the registered dealer availing of the tax deferment under section 23A of the earlier law shall be reckoned from the last date of repayment of the deferred amount of tax: Provided further that when an appeal or application for revision, or review has been filed, the period of limitation as aforesaid shall run from the date of order passed on such appeal, application for revision, or review or from the date of order passed in pursuance of or as a result of such order, whichever is later.

**51. Tax To Be First Charge On Property :-**

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and interest and penalty, if any, payable by a dealer or any other person under this Ordinance shall be a first charge on the property of the dealer or such person.

**52. Maintenance Of Accounts :-**

(1) Every registered dealer, other than a dealer permitted to pay tax under section 15, shall- (a) keep a true and complete account in respect of all goods produced, raised, manufactured, processed, bought, sold or delivered or transferred to or by him, in the manner prescribed; (b) maintain correct and complete accounts of dispatches and arrivals of goods as also of stock of goods



manufactured or transferred, in such manner as may be prescribed.

(2) Such dealers or persons as may be prescribed and such other dealers to whom sub-section (1) applies shall, at the end of each financial year, draw up, in the manner as may be prescribed, - (a) a manufacturing, trading and profit and loss account and a balance sheet, in the case of a manufacturer; and (b) a trading and profit and loss account and a balance sheet, in any other case. Provided that no account referred to in sub-section (1) shall be considered true and complete unless such accounts enable the prescribed authority to compute the tax payable and the entitlement input tax credit under the provisions of this Ordinance. Provided further that the accounts referred to in sub-section (1) shall not be considered true and complete unless they give a true and fair view - (i) of the state of affairs of the dealer or the person as at the end of the financial year, in the case of the Balance Sheet; and (ii) of the working results of the dealer or the person for the financial year, in the case of the manufacturing, trading and profit and loss account.

(3) Every dealer or a person required to keep accounts by sub-section (1) shall- (a) issue a challan in respect of all transfers of goods from his place of business otherwise than as a result of sale, in such form as may be prescribed; and (b) preserve all invoices for a period of not less than six years from the end of the year to which they relate, or for a period of two years after the completion of assessment, appeal or revision for the year, whichever is later.

(4) Every dealer permitted to pay tax under section 15 shall: (a) maintain accounts showing his purchases and sales during the year and such other accounts as may be prescribed; and (b) at the end of each financial year, draw up, in the manner as may be prescribed, a trading and profit and loss account and a balance sheet.

### **53. Issue Of Tax Invoice And Debit And Credit Notes :-**

(1) Every registered dealer making a taxable sale to another such dealer shall provide that purchaser at the time of sale with a tax invoice containing the following particulars: (a) the word Tax Invoice in bold letter at the top or any prominent place; (b) the name, address and Taxpayer Identification Number of the selling registered dealer; (c) the name, address and Taxpayer Identification Number of the purchasing registered dealer; (d) an individual serialised number and the date on which the tax invoice is issued; (e) description, quantity, volume and value of goods sold and amount of tax charged thereon indicated separately; (f)

signature of the selling dealer or his servant, manager or agent, duly authorised by him; (g) the name and address of the printer, if any, and first and last serial Number of tax invoices printed and supplied by him to the dealer. (2) The tax invoice shall not be issued by a dealer in the following circumstances, - (a) a registered dealer permitted under section 15 to pay a fixed sum in lieu of the tax payable by him; or (b) the sale in the course of export out of the territory of India; or (c) the sale in the course of inter State trade and commerce; or (d) the sale of goods exempt from tax (3) Not more than one tax invoice shall be issued for each taxable sale. (4) If a registered dealer sells any goods exceeding such amount in value as may be prescribed, in any one transaction to any person other than a registered dealer, he shall issue to the purchaser a retail invoice containing such particulars as may be prescribed and retain a copy thereof. (5) Tax invoice shall be issued in a minimum of three copies. The original and the first copy shall be issued to the purchaser or the person taking delivery of the goods, as the case may be, and the remaining copies shall be retained by the selling dealer. (6) Retail invoice shall be issued in duplicate. The original shall be issued to the purchaser or the person taking delivery of the goods, as the case may be, and the selling dealer shall retain the duplicate. (7) Every dealer referred to in sub-section (1) shall preserve books of account including tax invoices and retail invoices until the expiry of six years after the end of the year to which they relate or for such other period as may be prescribed. (8) If a registered dealer contravenes the provisions of this section, the prescribed authority shall, after giving the dealer an opportunity of being heard, direct him to pay by way of penalty a sum equivalent to twice the amount of tax payable for each sale in respect of which such contravention has taken place. (9) (a) Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the tax payable under this Ordinance in respect of that sale, either on account of return of goods or by reason of the goods being below the quality specified for them, the registered dealer making the sale shall provide the purchaser with a credit note containing the requisite particulars as may be prescribed. (b) Where the tax invoice has been issued and the tax payable under this Ordinance in respect of the sales exceeds the amount of tax charged in that tax invoice the registered dealer making the sale shall provide the purchaser with a debit note containing the requisite particulars as may be prescribed.

#### **54. Accounts To Be Audited In Certain Cases :-**

(1) Every dealer whose gross turnover exceeds such limit as may be prescribed shall, for the purposes of this Ordinance, get his annual accounts audited by an accountant by (i) the 30th day of November of the following year, in the case of a company within the meaning of the Companies Act, 1956; and (ii) the 31st day of October of the following year in any other case. (2) Every dealer referred to in sub-section (1) shall obtain, by the date specified in that sub-section, a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. A true copy of such report shall be furnished, on or before the due date, by such dealer to the prescribed authority. Explanation 1:- In this sub-section, "due date" means - (i) where the dealer is a company within the meaning of the Companies Act, 1956 (Act 1 of 1956), the 30th day of November of the year following the year to which such report relates; (ii) where the dealer is a person, other than a company,- (a) in a case where the accounts of the dealer are required under this Ordinance or any other law to be audited or where the report of an accountant is required to be furnished under section 55, the 31st day of October of the year following the year to which such report relates; (b) in any other case, 31st day of July of the year following the year to which such report relates. Explanation 2:-For the purposes of this section, "Accountant" means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 and includes a person who, by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956, is entitled to be appointed to act as an auditor of Companies registered anywhere in India. (3) If the accounts of a registered dealer are not required to be audited in terms of the provisions of sub-section (1), such dealer shall furnish, to the prescribed authority, the accounts and statements mentioned in sub-section (2) of section 52 on or before the 31st day of July of the year following the year to which such accounts or statements relates. (4) If a dealer contravenes the provisions of sub-sections (2) or (3), the prescribed authority shall, after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equivalent to two percent of the tax payable by him under section 36 of the Ordinance for every month, or part thereof, of such default.

#### **55. Furnishing Of Information By Government Departments,**

## **Banks, Financial Institutions Clearing And Forwarding Agents And Owners Of Warehouses, Godowns And Others :-**

(a) Every bank, including any branch of a bank, or any clearing house in the State or any financial institution, department of Government, corporation, institution, organizations or companies, boards, authorities, undertakings or any bodies owned, financed or controlled wholly or partly by the State Government or Central Government; or (b) every clearing, forwarding or booking agent or dalal or a person engaged in the business of transporting goods shall, if so required by any authority appointed under section 10 furnish any such particulars as may be required by such authority in respect of the transactions of any dealer with or through such banks or clearing house or any financial institution, department of Government, corporations, institutions, organization or companies, boards, authorities, undertakings or any other body owned, financed or controlled wholly or partly by the State Government or the Central Government relating to sales or purchases of goods by such dealers.

## **56. Production, Inspection, Search And Seizure :-**

(1) Subject to such rules as may be made by the State Government under this Ordinance, any authority appointed under sub-section (1) of Section 10 may, either before or after assessment, require any dealer to produce before it or him any accounts, registers or documents or to furnish any information relating to the financial transaction of the dealer, details of his purchases and sales and the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer, and the dealer shall comply with such requirement. (2) If reasonable grounds exist to suspect that- (a) a dealer, with an intention to reduce his tax liability under the Ordinance, has suppressed any financial transaction, element of value addition implicit in the transaction or the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer or has claimed input tax credit in excess of his entitlement; or (b) any clearing or forwarding agent or a person engaged in the business of transporting goods or owner of a warehouse or a godown is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax payable under this Ordinance, the prescribed authority shall, after making such further inquiries as may be deemed fit and after obtaining such authorization in the manner prescribed, proceed to inspect all the places of business of

the dealer or the clearing or forwarding agent or the person engaged in the business of transporting goods or the owner of warehouse or godown. Provided that if the prescribed authority is satisfied that delay in obtaining such authorization may be prejudicial to the interest of revenue he may, for reasons to be recorded in writing, proceed to inspect all the places of business of the dealer or the clearing or forwarding agent or the person engaged in the business of transporting goods or the owner of warehouse or godown without obtaining such authorization which may be granted subsequently. (3) The prescribed authority shall have the powers to enter into and search the premises, including the place of business, of such dealer or the person and, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer or the person as may be necessary, in the manner prescribed, and shall retain the same for so long as may be necessary in connection with any proceeding under this Ordinance or for a prosecution under any law: Provided that if the dealer or person whose accounts, registers or documents have been seized, applies for a copy of the same he shall be supplied with a photocopy of the same on payment of appropriate cost into a Government Treasury or a bank authorized in this behalf by the State Government. Explanation:- Such authority or inspector may take or cause to be taken such copies of, or extracts from, the accounts, registers or documents, as such authority or inspector may consider necessary. (4) (a) Any authority referred to in subsection (1) and (2) shall have the powers to seize any goods not properly accounted for in the books, accounts, registers and other documents of the dealer or the dalal, or the owner of the warehouse, or the clearing, booking or forwarding agent, or the person engaged in the business of transporting goods in the manner prescribed. (b) The authority referred to in clause (a) shall, in a case where the dealer or the person incharge of goods as mentioned in clause (a) fails to produce any evidence or fails to satisfy the said authority regarding the proper accounting of goods, impose a penalty, after allowing an opportunity of hearing in the prescribed manner to the dealer or such person, which shall be equal to three times the amount of tax calculated on the value of such goods and the goods shall be released as soon as the penalty is paid. (c) If the dealer or the person incharge of the goods mentioned in clause (a) demands time for production of necessary documents in support of proper accounting, the authority referred to in clause (a) shall release the goods on the condition that the

dealer or such person deposits a security equivalent to three times the amount of tax calculated on the value of the goods, either in the form of cash, to be deposited in a Government treasury, or in the form of Bank guarantee acceptable to the authority. (d) If the goods seized under clause (a) are not claimed by any person, the authority referred to in the said clause shall arrange for the safe custody of goods. (e) In case the penalty imposed under clause (b) is not paid or the goods remain unclaimed for a period of thirty days or more from the date of seizure, the goods so seized shall be sold by auction in the prescribed manner and the sale proceeds shall be appropriated towards the amount of penalty imposed under clause (b); The balance of the sale-proceeds, if any, shall be deposited in the Government Treasury and shall be refunded to the lawful claimant in the prescribed manner: Provided that in the case of goods of a perishable nature, the prescribed authority may decide to sell the goods by auction before a period of thirty days. (f) In case where the goods have been released on the deposit of a security as mentioned in clause (c) and evidence regarding proper accounting of goods, to the satisfaction of the authority referred to in clause (a), is not produced within thirty days from the date on which the security is deposited, the amount of security shall stand forfeited to the State Government. If, however, evidence or document to the satisfaction of the authority mentioned in clause (a) regarding the proper accounting of goods is produced within the said period of thirty days, the security shall be released in the prescribed manner. (5) (i) The power conferred under sub-sections (3) and (4) shall include the power to break open the lock of any box or receptacle or door of any other place or premises where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept. (ii) The powers conferred under sub-sections (3) and (4) shall also include the power to seal any box or receptacle, godown or building where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept. (6) An authority appointed under section 10 may require the assistance of any person, public servant or police officer in making a search and a seizure or for safe custody of goods seized under this section, and such person, public servant or police officer shall render necessary assistance in the matter. (7) Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of any search under sub-section (2) or (3), it shall be presumed, unless it is proved to the contrary, that such books of

accounts, documents, money or goods belong to such person. Explanation:- For the purposes of this section the expression "proper accounting", shall- (i) in the case of a dealer, mean that the goods have either not been entered in the books of accounts or they have been classified in a manner which is likely to lead to evasion of tax payable under this Ordinance; or (ii) in the case of the owner of a warehouse, or a clearing, booking or forwarding agent, or a person engaged in the business of transporting goods, mean properly entered in such registers and accounts as may be prescribed under sub-section (2) of section 59.

#### **57. Cross Checking Or Verification Of Transactions :-**

(1) With a view to preventing evasion of tax payable under this Ordinance and ensuring proper compliance with the provisions of this Ordinance, the prescribed authority may, from time to time, collect information regarding sales and purchases effected by any class of dealers and cause any of such transactions of sale and purchase to be cross-checked. (2) For this purpose, the prescribed authority may, from time to time and by issuing a notice, in the manner and form prescribed, require any class of dealers to furnish, before such authority and by such date as may be specified in the said notice, such information, details and particulars as may be specified in the notice, regarding the transactions of sales and purchases effected by the dealers during the period mentioned in the said notice. (3) The prescribed authority shall cause any of such transactions to be cross-checked with reference to the books of accounts of the purchasing and selling dealers. For this purpose, the prescribed authority shall send an intimation required for the purpose of cross-checking, stating therein the details of the transactions proposed to be cross-checked and the time and date on which any officer or person duly authorised to cross check the transaction will visit the place where the books of accounts are ordinarily kept by the dealer

#### **58. Survey :-**

(1) With a view to identifying dealers who are liable to pay tax under this Ordinance, but have remained unregistered, the prescribed authority, shall, from time to time, cause a survey of unregistered dealers to be organized. (2) For the purposes of the survey, the prescribed authority may, by notice in the prescribed form, require any dealer or class of dealers to furnish the names, addresses and other particulars, in the manner specified, of the persons and dealers who have purchased any goods from such

dealer or class of dealers during a given period. (3) For the purposes of survey, the prescribed authority may call for, by notice in prescribed form, details and particulars regarding the services provided by public utilities, financial institutions including Banking companies, clearing and forwarding agents, owners of warehouses, dalals and persons engaged in the business of transporting goods which will be relevant and useful for the purposes of the survey.

### **59. Control On Clearing, Forwarding Or Booking Agent And Any Person :-**

(1) Every clearing, forwarding or booking agent or dalal or a person transporting goods who in course of his business handles the document of title to the goods or transports goods or takes delivery of goods for or on behalf of a dealer and having his place of business in the State of Bihar shall furnish information about his place of business to the prescribed authority, within such time and in such manner as may be prescribed. (2) Every such agent or person shall maintain true and complete accounts, registers and documents, as may be prescribed, in respect of the goods handled by him and the documents of title relating thereto and shall produce the said accounts, registers and documents before the prescribed authority as and when required by him. (3) If any agent or person referred to in sub-section (1) contravenes the provisions of sub-section (2) in a manner which is likely to lead to evasion of any tax payable under this Ordinance, the prescribed authority may, without prejudice to any action under section 81, on charge of abetment, after giving such agent or person an opportunity of being heard, direct him to pay by way of penalty an amount which shall be equal to three times the amount of tax calculated on the value of goods in respect of which complete particulars have not been furnished or incorrect particulars or information have been furnished. Explanation:- For the purposes of this sub-section- (i) "Dalal" shall include a person who renders his services for booking of, or taking delivery of, consignment of goods at a Railway station, booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise. (ii) "Person transporting goods" shall, besides the owner, include the manager, agent, driver or employee of the owner, or person in charge of a place of loading or unloading of goods other than a rail-head, or a post office, or of a goods carrier



carrying such goods, or a person who accepts consignments of such goods for dispatch to other places or gives delivery of any consignment of such goods to the consignee.

#### **60. Establishment Of Check-Posts :-**

(1) The State Government may, by notification, set up and erect, in such manner as may be prescribed, check-posts and barriers at any place in the State with a view to preventing evasion of tax payable under this Ordinance. (2) Every person transporting goods other than those specified in Schedule-I of this Ordinance and subject to such conditions as may be prescribed, shall, at any check-post or barrier, referred to in sub-section (1) and before crossing such check-post or barrier file before such authority or officer as may be authorized by the State Government in this behalf, a correct and complete declaration in such form and in such manner as may be prescribed. (3) Any authority or officer who may be authorized by the State Government in this behalf may, for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub-section (2) and in such manner as may be prescribed, intercept, detain and search any goods carrier; and the person transporting goods or for the time being in charge of goods shall render all possible assistance to such authority or officer in carrying out the search. (4) (a) The authority referred to in sub-section (3) may seize any goods along with the vehicle or carrier, which, he suspects, are being transported in contravention of the provisions of sub-section (2) together with any container or material for the packing of such goods: Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer, the dealer or the person in charge of goods and not less than two witnesses; a copy of the seizure list shall be made over to the dealer or the person in charge of the goods, as the case may be. (b) The provisions of section 56 of this Ordinance shall mutatis mutandis, apply in matters relating to such seizure, penalty, security, release and confiscation of goods.

#### **61. Restriction On Movement Of Goods :-**

(1) A person transporting goods- (a) from any place outside Bihar to any place inside Bihar, or (b) from any place inside Bihar to any place outside Bihar, or (c) from any place within Bihar to any other such place, or (d) from any place outside Bihar to any other such place, shall carry a declaration in such form as may be prescribed by the Commissioner supported by a cash memo, retail invoice, bill

or tax invoice, as the case may be, in case the movement is as a result of sale or a challan in case the movement is otherwise than as a result of sale, in respect of goods which is being transported on a goods carrier, vehicle or a vessel or is otherwise in transit or in transit storage and shall produce such cash memo or bill or tax invoice or challan, as the case may be, along with the aforesaid form of declaration on demand before the prescribed authority: Provided that the Commissioner may exempt, by notification in the official gazette, consignments below a particular value or quantity from the requirement of this sub-section in so far as it relates to carrying of a declaration. (2) Any authority or officer who may be authorized by the State Government in this behalf may, for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub-section (1) intercept, detain and search any goods carrier, vehicle or vessel and may also search the warehouse or godown or any other such place of transit storage, where goods are kept in course of transportation and if the said authority is satisfied on such verification and search that transportation of goods is being made in contravention of the provision of sub-section (1), he may seize any such goods together with any container or material for the packing of such goods: Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer, the dealer or the person in charge of goods and not less than two witnesses; a copy of the seizure list shall be made over to the dealer or the person in charge of the goods, as the case may be. (3) The provisions of section 56 of this Ordinance shall mutatis mutandis, apply in matters relating to such seizure, penalty, security, release and confiscation of goods.

## **62. Transportation Through The State Of Bihar :-**

(1) If any consignment of goods is being transported by road from a place outside the State to another such place and the vehicle carrying the consignment passes through the territory of this State, the driver or any other person incharge of the vehicle shall obtain transit permission in the prescribed manner from the authority of the first check-post falling enroute after entry into the State and shall surrender the same transit permission to the authority of the last check-post before leaving the State and in the event of failure to do so within seventy-two hours of leaving the first check-post falling enroute, it shall be deemed that goods so transported have been sold by the owner or the person-in- charge of the vehicle

within the State of Bihar. (2) In case a goods carrier fails to comply with the provisions of sub-section (1) he shall be liable to pay penalty at the rate of Rupees five hundred for every day of the default or a sum twice the amount of tax calculated on the value of the goods transported in contravention of sub-section (1), whichever is higher. Provided that no such penalty shall be levied without giving the person an opportunity of being heard. Provided further that if the person proceeded against justifies, beyond any doubt, the reasons for any delay exceeding seventy-two hours, the prescribed authority shall, for reasons to be recorded in writing, condone the delay.

**63. Liability To Pay Tax In Case Of Transfer Of Business :-**

(1) When the ownership of the business of a dealer liable to pay tax under this Ordinance is entirely transferred, the transferor and the transferee, shall jointly and severally be liable to pay any tax, interest and penalty, if any payable in respect of such business and remaining unpaid at the time of the transfer and the transferee shall also be liable to pay tax on sales or purchases made by the transferee on and from the date of such transfer and shall forthwith apply for the grant of a registration certificate unless such certificate is already possessed by him. (2) Where a dealer liable to pay tax under this Ordinance transfers the ownership of a part of his business, the transferor shall be liable to pay tax in respect of the stock of goods transferred with that part of the business.

**64. Tax Payable By Deceased Dealer Shall Be Paid By His Representative :-**

(1) Where a dealer dies after assessment but before payment of the tax, interest or penalty payable by him under this Ordinance, his executor, administrator, successor-in-interest or legal representative shall be liable to pay out of the property of the deceased, to extent to which it is capable of meeting the charge, the amount payable by such dealer. (2) When a dealer dies without having furnished the return under section 24 or after having furnished the return but before assessment, the prescribed authority may proceed to make an assessment and determine the amount payable under this Ordinance by the deceased and for the said purpose he may require the executor, administrator, successor-in-interest or legal representative, as the case may be, of the deceased to perform all or any of the obligations, which he might, under the provisions of this Ordinance, have required the deceased to perform. The amount thus determined shall be payable

by the executor, administrator, successor-in-interest or legal representative of the deceased to the extent to which the property of the deceased is capable of meeting the charge.

**65. Tax-Liability Of Guardian And Trustee, Etc :-**

Where the business in respect of which tax is payable under this Ordinance is carried on by, or is in charge of, any guardian, trustee or agent of a minor or other incapacitated person, the tax shall be assessed upon and recoverable from such guardian, trustee or agent, as the case may be in the manner and to the same extent as it would be leviable upon and recoverable from any such minor or incapacitated person, if he were of full age and sound mind, and if he were conducting the business himself and all the provisions of this part shall apply accordingly.

**66. Tax-Liability Of Court Of Wards :-**

Where the estate or any portion thereof of a dealer owning a business in respect of which tax is payable under this Ordinance is under the control of the Court of wards, the Administrator General, the official Trustee, or any Receiver or manager, including any person, whatever his designation who in fact manages the business, appointed by, or under order of a court, the tax shall be assessed upon and recoverable from such court of wards, Administrator-General, official trustee, Receiver or Manager in like manner and to the same extent as it would be assessable upon and recoverable from the dealer if he were conducting the business himself; and all the provisions of this Ordinance shall apply accordingly.

**67. Liability In Case Of Dissolution Of Firm, Etc :-**

Where a dealer is a Hindu undivided family, firm or association of persons, and such family, firm or association is partitioned, dissolved or disrupted, as the case may be- (a) the tax, interest and penalty payable under this Ordinance by such family, firm or association of persons for the period upto the date of such partition, dissolution or disruption may be assessed as if no partition, dissolution or disruption had taken place and all the provisions of this Ordinance shall apply accordingly; and (b) every person who was at the time of such partition, dissolution or disruption a member or partner of a Hindu undivided family, firm or association of persons shall, notwithstanding such partition, dissolution or disruption, be liable severally and jointly for the payment of tax, interest including penalty, if any, payable under

this Ordinance by such family, firm or association of persons, whether dues of tax, interest or penalty is for the period prior to or after such partition, dissolution or disruption.

**68. Refunds :-**

(1) Subject to the other provisions of this Ordinance and the rules made thereunder the prescribed authority shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him in such manner as may be prescribed. (2) Where on account of death, incapacity, insolvency liquidation or other cause a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund in the manner prescribed. Provided that the prescribed authority shall first apply such excess towards the recovery of any amount for any period in respect of which a notice under section 39 has been issued and shall then refund the balance, if any.

**69. Provisional Refunds :-**

(1) If a registered dealer files any returns or produces any other evidence as required by or under this Ordinance, and the return or evidences produced show any amount to be refundable to the dealer, then the dealer may apply in the prescribed form to the prescribed authority for grant of provisional refund pending assessment. (2) The prescribed authority shall require the said dealer to furnish such security as may be prescribed for an amount equal to the amount of refund. On receipt of such security, the prescribed authority shall, subject to rules, grant the dealer a provisional refund of the amount claimed refundable as aforesaid. (3) The prescribed authority shall, cause the assessment of such dealer in respect of the year containing the period covered by the said refund to be taken up as early as practicable and adjust the provisional refund against the tax finally assessed. Any excess of the amount refunded provisionally over the amount finally assessed shall be recovered as arrears of tax from the dealer and the dealer shall be liable to pay simple interest on such excess at the rate of two percent per month or part thereof from the date of grant of provisional refund till the date of the said order.

**70. Interest On Delayed Refund :-**

(1) Where an amount required to be refunded by the prescribed authority to any person is not refunded to him or the application for

refund is not rejected, as the case may be, within ninety days of the amount having become refundable, the prescribed authority shall pay such person simple interest at the rate of six percent per annum or part thereof on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund. Provided that where the amount becomes refundable by virtue of an order of the Tribunal or the High Court or the Supreme Court, the interest under the provisions of this section shall be payable from the date immediately following the expiry of the period of ninety days from the date of receipt of the order of the Tribunal, the High Court or the Supreme Court, by the officer whose order forms the subject matter of the proceedings before the Tribunal, the High Court or the Supreme Court, to the date of refund. Explanation:- If the delay in granting the refund within the period of ninety days aforesaid is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable. (2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner, whose decision shall be final.

### **71. Power To Withhold Refund In Certain Cases :-**

(1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Ordinance is pending, and the authority competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such authority may withhold the refund till such time as is deemed fit. Provided that the Commissioner may on application or otherwise order for release of such refund if he is of the opinion that the situation does not require such action on the part of the prescribed authority.

### **72. Appeal :-**

(1) Subject to such rules as may be made by State Government under this Ordinance, any dealer objecting to an order of assessment or an order levying interest or penalty passed by the prescribed authority against him, or a person objecting to an order of penalty passed against him or an order under section 47 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorized in this behalf; (2) No appeal under sub-section (1) shall be admitted unless the dealer objecting to an order of assessment has paid twenty per centum of the tax assessed or full

amount of admitted tax whichever is greater. (3) Every appeal under this section shall be filed within forty-five days of the receipt of the notice of demand but where the appellate authority is satisfied that the appellant had sufficient reason for not preferring the appeal within time, it may condone the delay. (4) The appellate authority while disposing of an appeal against an order, other than an order under section 47, may (a) (i) confirm, annul, reduce, enhance or otherwise modify such order; or (ii) set aside the order directing the authority below to make fresh order after further enquiry on specific points; and (b) in other cases pass such order as it may, for reasons to be recorded in writing, deem fit. (5) No order under this section shall be passed without giving reasonable opportunity of hearing to the appellant as also the authority whose order has been appealed against.

### **73. Revision :-**

(1) Subject to such rules as may be made by the State Government an order passed on an appeal under sub-section (4) of section 72 may, on application, be revised by the Tribunal. (2) Subject to as aforesaid, any order passed under this Ordinance or the rules made thereunder, other than an order passed by the Commissioner under sub-section (7) of section 10 or an order against which an appeal has been provided in section 72 may, on application be revised (a) by the Joint Commissioner, specially empowered in this behalf, if the said order has been passed by an authority not above the rank of Deputy Commissioner; and (b) by the Tribunal, if the said order has been passed by the Joint Commissioner or Commissioner. (3) Every application for revision under this section shall be filed within ninety days of the communication of the order which is sought to be revised, but where the authority to whom the application lies is satisfied that the applicant had sufficient cause for not applying within time, it may condone the delay. (4) No order under this section shall be passed without giving the applicant as also the authority whose order is sought to be revised or their representative, a reasonable opportunity of being heard.

### **74. Revisionary Powers Of The Commissioner :-**

The Commissioner may, suo moto call for and examine the record of any proceeding recorded by any authority, officer or person subordinate to him under this Ordinance and if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of revenue, pass such order as he deems fit after

giving the dealer or the person concerned an opportunity of being heard.

**75. Additional Evidence In Appeal Or Revision :-**

A dealer shall not be entitled to produce additional evidence whether oral or documentary in appeal before the appellate authority or in revision before the Commissioner or the Tribunal except where the evidence sought to be adduced is evidence, which the prescribed authority had wrongly refused to admit or which, after exercise of due diligence, was not within his knowledge or could not be produced by him before the assessing authority or for the production of which adequate time was not given by the assessing authority and in every such case upon the additional evidence being taken on record reasonable opportunity for challenge or rebuttal shall be given.

**76. Review :-**

Subject to such rules as may be made by the State Government under this Ordinance, any authority appointed under section 10 or the Tribunal may review any order passed by it, if such review is, in the opinion of the said authority or Tribunal, as the case may be, necessary on account of a mistake which is apparent from the record: Provided that no such review, if it has the effect of enhancing the tax, interest or penalty or of reducing a refund shall be made unless the said authority or the Tribunal, as the case may be, has given the dealer, or the person concerned a reasonable opportunity of being heard.

**77. Determination Of Disputed Questions :-**

(1) If any question arises, otherwise than in proceedings before a Court, or before the prescribed authority has commenced assessment of a dealer under section 27 or section 28 or section 29 or section 30 or section 31 or section 32 or section 33, whether, for the purposes of this Ordinance- (a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or (b) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or (c) any transaction is a sale or a purchase, or where it is a sale or a purchase the sale price or the purchase price, as the case may be, thereof, or (d) any particular person or dealer is required to be registered, or (e) in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate



thereof, or (f) rebate of input tax credit can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such rebate can be claimed, or (g) the order passed under sub-section (2) of section 25 is just and proper; or (h) any other question involving interpretation of any provisions of the Ordinance or earlier law; the Commissioner shall, subject to such rules as may be made, make an order determining such question. Explanation:- For the purposes of this sub-section, the prescribed authority shall be deemed to have commenced assessment of the dealer under section 27 or section 28 or section 29 or section 30 or section 31 or section 32 or section 33, when the dealer is served with any notice by the prescribed authority under the said sections. (2) The Commissioner may direct that the determination shall not affect the liability of any person under this Ordinance, as regards any sale or purchase affected prior to the determination or such date as he may specify. (3) If any such question arises from any order already passed under this Ordinance or the earlier law, no such question shall be entertained for determination under this section; but such question may be raised in appeal against such order.

#### **78. Power To Transfer Proceedings :-**

(1) The Commissioner may, after recording his reasons for doing so, by order in writing transfer any proceedings or class of proceedings under any provision of this Ordinance, from himself to any other officer and he may likewise transfer any such proceeding, including a proceeding pending with any officer or already transferred under this section, from any officer to any other officer. (2) For the purpose of this section, any proceeding shall be deemed to have commenced only when any authority having appropriate jurisdiction issues notice under the provisions of this Ordinance, rules or notifications and the proceedings shall be deemed to be pending only after issue of such notice. (3) Where no proceedings are pending before any authority, then any authority having appropriate jurisdiction over a person or dealer, may initiate and complete any proceedings whatsoever. Explanation:- In this section, the word "proceedings" in relation to any dealer means all proceedings under this Ordinance in respect of any year, which may be pending on the date of such order or which may have been completed on or before such date, and also includes all proceedings under this Ordinance which may be commenced after the date of such order in respect of the said year in relation to such dealer.

### **79. Appeal Before High Court :-**

(1) An appeal shall lie to the High Court from every order by the Tribunal, if the High Court is satisfied that the case involves a substantial question of law. (2) The Commissioner or a dealer aggrieved by any order passed by the Tribunal- (i) under the earlier law, on or after the date of commencement of this Ordinance; or (ii) under this Ordinance, may file an appeal to the High Court, and such appeal under this section shall be filed within ninety days from the date of the communication to the dealer or the Commissioner of the order appealed against, in the form of a memorandum of appeal precisely stating therein the substantial question of law involved. (3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate the question. (4) The appeal shall be heard only on the question so formulated and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question: Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. (5) Where an appeal is filed under sub-section (1) by a dealer, such appeal shall not be admitted by the High Court unless fifty percent of the balance due from the dealer after the order passed by the Tribunal is paid by him. (6) (a) The High Court shall decide the substantial question of law so formulated or involved and deliver such judgment thereon containing the grounds on which such decision is founded and may award such costs as it deems fit. (b) The High Court may determine any issue which- (i) has not been determined by the Tribunal, or (ii) has been wrongly determined by the Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1), (c) On delivery of judgment by the High Court, effect shall be given to it by the officer empowered to assess the dealer on the basis of a certified copy of the judgment (7) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to High Court, shall as far as may be, apply in the case of appeals under this section.

### **80. Case Before High Court To Be Heard By Not Less Than Two Judges :-**

(1) When an appeal has been filed before the High Court under section 79 it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the

opinion of such Judges or of the majority, if any, of such Judges. (2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of other Judges of the High Court and such point shall be decided according to the opinion of the majority of Judges who have heard the case including those who first heard it.

### **81. Offences And Penalties :-**

(1) Whoever, not being a registered dealer under section 19, falsely represents that he is or was a registered dealer at the time when he sells or buys goods shall, on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to one year and with fine not exceeding ten thousand rupees. (2) Whoever, knowingly furnishes a false return shall, on conviction, be punished- (a) in case where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds Rs.50,000 (Rupees Fifty thousand) with rigorous imprisonment for a term which shall not be less than six months but which may extend to one year and with fine not exceeding rupees ten thousand; (b) in any other case, with rigorous imprisonment for a term, which shall not be less than three months but which may extend to six months and with fine not exceeding rupees five thousands. (3) Whoever, knowingly produces before the prescribed authority, false bill, tax invoice, cash-memorandum, voucher, declaration, certificate or other document for any of the purposes referred to in sub-section (1) of section 56, shall, on conviction, be punished- (a) in case where the amount of tax which could have been evaded, if the documents referred to above had been accepted as true, exceeds rupees Fifty thousand during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to one year and with fine not exceeding ten thousand rupees; (b) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to six months and with fine not exceeding five thousand rupees. (4) Whoever knowingly keeps false account of the value of the goods bought or sold by him in contravention of sub-section (1) of section 52 or section 53, shall, on conviction be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to six months and with fine not exceeding seven thousand five hundred rupees. (5) Whoever,

knowingly produces false accounts, registers or documents or knowingly furnishes false information, shall, on conviction, be punished- (a) in case where the amount of tax which could have been evaded, if the accounts, registers or documents or information referred to above had been accepted as true, exceeds rupees fifty thousand during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to one year and with fine not exceeding ten thousand rupees; (b) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to six months and with fine not exceeding seven thousand five hundred rupees. (6) Whoever issues to any person a certificate or declaration under the Ordinance, rules or notifications or a bill, cash-memorandum, tax invoice, voucher or other document which he knows or has reason to believe to be false, shall on conviction, be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to one year and with fine not exceeding ten thousand rupees. (7) Whoever- (i) willfully attempts, in any manner whatsoever, to evade any tax leviable under this Ordinance, or (ii) willfully attempts, in any manner whatsoever, to evade any payment of any tax, penalty or interest or all of them under this Ordinance shall, on conviction be punished- (a) in case where the amount involved exceeds rupees fifty thousand during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to one year and with fine not exceeding ten thousand rupees; and (b) in any other case, with rigorous imprisonment or a term which shall not be less than three months but which may extend to six months and with fine not exceeding seven thousand five hundred rupees. (8) Whoever aids or abets any person in commission of any act specified in sub-sections (1) to (7) shall, on conviction, be punished with rigorous imprisonment which shall not be less than three months but which may extend to six months and with fine not exceeding seven thousand five hundred rupees. (9) Whoever- (a) carries on business as a dealer without being registered in willful contravention of section 19, or (b) fails without sufficient cause to furnish any information required by section 23, or (c) without reasonable cause, contravenes any of the provisions of the Ordinance or rules framed thereunder, or (d) without sufficient cause fails to issue a tax invoice or bill or cash memorandum as required under section 53, or (e) without sufficient cause, when directed so to under section 59 to keep any

accounts or record, in accordance with the directions, or (f) voluntarily obstructs any officer making inspection or search or seizure under section 56- shall, on conviction, be punished with imprisonment for a term which may extend to six months and with fine not exceeding seven thousand five hundred rupees. (10) Whoever fails, without sufficient cause, to furnish any return as required by section 24 by the date and in the manner prescribed, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months and with fine, which shall not be less than- (i) rupees five thousand, if the tax due for the period covered by the return does not exceed rupees twenty thousand; (ii) rupees seven thousand five hundred, if the tax due for the period covered by the return exceeds rupees twenty thousand but does not exceed rupees one lac; (iii) rupees ten thousand, if tax due for the period covered by the return exceeds rupees one lac. (11) Notwithstanding anything contained in sub-sections (1) to (10), no person shall be proceeded against under these sub-sections for the acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than Rs. 5,000 (Rupees Five thousand) during the period of a year. (12) Where a dealer is accused of an offence specified in sub-sections (1), (2), (3), (4), (5), (6) or (7), or in clauses (a), (b), (c), (d), (e), and (f) of sub-section (10), the person deemed to be the manager of the business of such dealer under section 22 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

## **82. Cognizance Of Offences :-**

(1) Save as provided in section 81, the punishments inflicted under the said section shall be without prejudice to any penalty which may be imposed under the provisions of this Ordinance. (2) No Court shall take cognizance of any offence under this Ordinance except with the previous sanction of the Commissioner or any officer specially empowered in this behalf and no court inferior to that of a Magistrate of the first class shall try any such offence. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act II of 1973), all offences punishable under section 81 shall be cognizable and bailable and it shall be lawful for a Magistrate of the First class to pass on any person convicted of an offence under section 81, a sentence or fine in excess of his powers under section 29 of the said code.

### **83. Investigation Of Offences :-**

(1) Subject to such conditions as may be prescribed, the Commissioner may authorize either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Ordinance. (2) Every officer so authorized shall, in the conduct of such investigation, exercise the powers conferred by the code of Criminal Procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence.

### **84. Offences By Companies And Others :-**

(1) Where an offence under this Ordinance or the rules has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of its business 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 in this Ordinance if he proves that the 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 this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation:-For the purpose of this section, "company" means a company incorporated under the Companies Act, 1956, and includes a body corporate, a firm or other association of individuals. (3) Where an offence under this Ordinance has been committed by a Hindu undivided family, the karta thereof 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 the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence: Provided further that, where an offence under this Ordinance has been committed by a Hindu undivided family 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 adult member of

the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**85. Compounding Of Offences :-**

(1) The Commissioner may, either before or after the institution of proceedings under section 81 accept from any person charged with an offence under sub-sections (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) of the said section by way of composition of the offence, a sum not exceeding ten thousand rupees and where the offence charged was likely to cause or caused evasion of any amount of tax payable under this Ordinance, a sum not exceeding three times of such amount, whichever is greater. (2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no further proceeding shall be taken against the accused person in respect of the same offence.

**86. Bureau Of Investigation :-**

(1) The State Government may, by an order published in the Official Gazette, constitute a Bureau of Investigation and it shall consist of such personnel and such number of officers and such hierarchy of supervision and control as may be specified by the State Government in the said order. Provided that if authorities appointed under sub-section (1) of section 10 are specified as such they shall, without prejudice to the powers under sub-section (1) of section 10, exercise the powers of an authority under sections 55, 56, 58, 59, 60, 61 and 62 for carrying out the purposes of this Ordinance. (2) (i) The State Government may by an order published in the Official Gazette, vest an officer of the Bureau of Investigation with the powers of an officer incharge of a police-station under the Code of Criminal Procedure, 1973 and with such other powers under different Ordinances, as it may consider necessary. (ii) The Commissioner may, by an order published in the Official Gazette, authorise an officer of the Bureau of Investigation to exercise the powers of an authority appointed under section 10 in respect of such matters as may be specified in the order. (3) The Bureau of Investigation shall function under the control and supervision of the Commissioner, and shall discharge such duties as may be assigned to it by the Commissioner, including investigation of offences under section 83 of this Ordinance.

**87. Appearance Before Taxing Authorities :-**

Any person, who is required to appear before any authority

appointed under section 10 or before the Tribunal or before an officer of the Bureau of Investigation constituted under section 86 in connection with any proceeding under this Ordinance may appear before such authority through- (a) a person authorized in the prescribed manner by him in this behalf, being his relative or person in his regular and whole time employment, or (b) a legal practitioner, or (c) subject to such conditions as may be prescribed, an accountant, company secretary or sales tax practitioner who possesses the prescribed qualification.

**88. Change Of An Incumbent Of An Office :-**

Whenever in respect of any proceeding under this Ordinance any person or authority appointed under section 10 ceases to exercise jurisdiction and is succeeded by another person who has and exercises jurisdiction, the person so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor: Provided that the dealer concerned may demand that before the proceeding is so continued, the previous proceeding or any part thereof be reopened or that before any order is passed against him, he be heard.

**89. Bar To Certain Proceedings :-**

Save as provided in section 79, no assessment made and no order passed under this Ordinance or rules made thereunder by any authority appointed under section 10 or by the Bureau of Investigation or by the Tribunal shall be called in question in any court, and save as is provided in sections 72 or 73 or 74 or 76, no appeal or application for revision or review shall lie against any such assessment or order.

**90. Disclosure Of Information By A Public Servant :-**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Ordinance, or in any record of evidence given in the course of any proceedings under this Ordinance (other than proceeding before a Criminal Court), or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Ordinance 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 servant of the Government to produce before it any such statement, return, account, document or record or any part thereof,



or to give evidence before it in respect thereof. (2) If, save as provided in sub-section (3), any servant of the Government discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment, which may extend to six months or with fine or with both. (3) Nothing contained in this section shall apply to the disclosure- (a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code, 1860 (XLV of 1860) or the Prevention of Corruption Act, 1947, or this Ordinance, or any other law for the time being in force; or (b) of any such particulars to the State Government or to any person acting in the execution of this Ordinance or to any person for the purposes of this Ordinance; or (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Ordinance of any process for the service of any notice or the recovery of any demand; or (d) of any such particulars to a civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Ordinance; or (e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Ordinance; or (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Commercial Tax Department to any person or persons appointed as Commissioner under the Public Servants (Inquiries) Act, 1850 (XXXVII of 1850), or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or (g) of such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realize any tax or duty imposed by it; or (h) of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with sales tax proceedings against a legal practitioner, sales tax practitioner or company secretary or chartered accountant, to the authority empowered to take disciplinary action against members practicing the profession of a legal practitioner, sales tax practitioner or company secretary or chartered accountant, as the case may be; or (i) of any such particulars to an officer of the Central Government or any State Government as may be necessary for the administration of any law in force in any part or the whole of India.

## **91. Agreements To Defeat Liability To Pay Tax Under This Ordinance :-**

Notwithstanding anything contained in this Ordinance, if the prescribed authority is satisfied that an agreement has been entered into and is being carried out in pursuance whereof a person has obtained a tax benefit and, having regard to the substance of the agreement, it can be concluded that the person, or one of the persons, who entered into or carried out the agreement, did so for the sole or dominant purpose of enabling the person to obtain the tax benefit, the prescribed authority may determine the liability of the person who has obtained the tax benefit as if the agreement had not been entered into or carried out. Explanation:- For the purposes of this section- (1) "agreement" includes any agreement, arrangement, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings and any plan, proposal, course of action or course of conduct. (2) "tax benefit" includes- (a) a reduction in the liability of any person to pay tax; or (b) an increase in the entitlement of any person to input tax credit or refund; or (c) any other avoidance or postponement of liability for the payment of tax under this Ordinance.

## **92. Write Off Of Dues :-**

Notwithstanding anything contained in this Ordinance, the State Government, by notification to be published in the Official Gazette, may, subject to such rules as may be prescribed, declare any dues created under this Ordinance or the earlier law as unrecoverable.

## **93. Power To Make Rules :-**

(1) The State Government may, subject to the condition of previous publication, make rules for- (i) All matters expressly required or allowed by this Ordinance to be prescribed and generally for carrying out the purposes of this Ordinance and regulating the procedure to be followed, forms to be adopted and fees to be paid in connection with proceedings under this Ordinance and all other matters ancillary or incidental thereto. (ii) Any other matter for which there is no provision or no sufficient provision in this Ordinance and for which provision is in the opinion of the State Government, necessary for giving effect to the purposes of this Ordinance. (2) In making any rules the State Government may direct that for a breach thereof, the prescribed authority may in the prescribed manner, impose a penalty not exceeding five thousand rupees and when the breach is a continuing one, a penalty not

exceeding one hundred rupees per day during the continuance of the offence. (3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

#### **94. Repeal And Savings :-**

(1) The Bihar Finance Act, 1981 (Act, 5 of 1981) (hereinafter referred to as the repealed Act) is hereby repealed from the date of commencement of this Ordinance. (2) The repeal shall not, - (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect any appointments made or the previous operation of the repealed Act or any thing done or suffered thereunder; or (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Act except the right or privilege accrued under the repealed Act or the rules framed or notifications issued thereunder to industries, granted under any industrial policy or industrial policy resolution of the State Government; or (d) affect any penalty, forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Act; or (e) affect any investigation, enquiry, assessment, proceeding, any other legal proceeding or remedy instituted, continued or enforced under the repealed Act and any such penalty, forfeiture or punishment as aforesaid or any proceeding or remedy instituted, continued, or enforced under the repealed Act shall be deemed to be instituted, continued or enforced under the corresponding provisions of this Ordinance. (2) All rules made and notifications issued under the provisions of the repealed Ordinance or any notification issued under the Bihar Sales Tax Act, 1959 or under any subsequent Sales Tax Ordinances issued prior to the commencement of the Repealed Act and rules made thereunder and in force on the date of the commencement of this Ordinance, shall remain in force unless such rules and notifications are

superseded in express terms or by necessary implication by the provisions of this Ordinance or the rules made and notifications issued thereunder. (3) Any reference to any section of the repealed Act in any rule, notification regulation or circular shall be deemed to refer to the relevant corresponding section of this Ordinance, until necessary amendments are made in such rule, notification, regulation or circular. (4) The limitations provided in this Ordinance shall apply prospectively, and all events occurred and all issues arose prior to the date of commencement of this Ordinance, shall be governed by the limitations provided or the provisions contained in the repealed Act.

#### **95. Declaration Of Stock Of Goods Held On The Appointed Day :-**

The Commissioner may by notification in the Official Gazette require that any class of registered dealers as may be specified in the notification declare such details regarding the stock of goods held by them on the day immediately preceding the appointed day in such manner and with such particulars and to such authority, as he may notify in this behalf.

#### **96. Transitory Provisions :-**

(1) Where any goods, other than those specified in the notification issued under sub-section (2) of section 13 of this Ordinance, held in stock by a registered dealer on the date of commencement of this Ordinance are goods which have already suffered tax on the first point of their sale within the meaning of the earlier law, are sold by him or are consumed in manufacture of other goods on or after the date of commencement of this Ordinance, he shall claim and be allowed, in such manner as may be prescribed, an input tax credit under section 16 and 17 of this Ordinance. (2) Where any goods, other than those specified under sub-section (2) of section 13 of this Ordinance, held in stock by a registered dealer on the date of commencement of this Ordinance are goods which have already suffered tax on the first point of their sale within the meaning of the earlier law, are used or consumed by him for the manufacture of goods for sale within the state of Bihar or in the course of inter-State trade and commerce under section 3 of the Central Sales Tax Act, 1956 or in the course of export within the meaning of section 5 of the Central Sales Tax Act, 1956 on or after the date of commencement of this Ordinance, he shall claim and be allowed, in such manner as may be prescribed, an input tax credit under section 16 and 17 of this Ordinance. (3) Where- (a) any dealer has

been granted the facility of deferment of tax payable under section 23A of the earlier law and who has, on the commencement of this Ordinance, not availed of the full entitlement, he shall be allowed to continue to defer the tax payable under this Ordinance, in the manner and to the extent prescribed; (b) any dealer has been granted the facility of exemption from payment of tax under clause (b) of sub-section (3) of section 7 of the earlier law and who has, on the commencement of this Ordinance, not availed of the full entitlement, he shall be allowed to opt for deferment of his tax liability under the Ordinance, in the manner and to the extent prescribed.

**97. Construction Of References In Any Repealed Law To Officers, Authorities, Etc :-**

Any reference in any provision of the earlier law to an officer, authority or tribunal shall, for the purpose of carrying into effect the provisions contained in section 83 be construed as a reference to the corresponding officer, authority or tribunal appointed or constituted by or under this Ordinance; and if any question arises as to who such corresponding officer, authority or tribunal is, the decision of the Commissioner thereon shall be final.

**98. Removal Of Difficulty :-**

If any difficulty arises in giving effect to the provisions of this Ordinance the State government may, as occasion may require, by order not inconsistent with this Ordinance and the rules made thereunder, do anything which appears to it necessary for the purposes of removing the difficulty.

**99. Laying Of Certain Notifications On The Table Of The State Legislature :-**

Every notification issued under this Ordinance shall be laid, as soon as may be, after it is published in the Official Gazette, before, each House of State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or both Houses agree that the notification should be annulled, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

