

Himachal Pradesh General Sales Tax Act, 1968

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Himachal Pradesh General Sales Tax Act, 1968

An Act to provide for the levy of a general tax on the sale or purchase of goods in Himachal Pradesh and for the repeal of the corresponding Acts as at present in force. (Received the assent of the President of India on the 13th December, 1968 and was published in the Himachal Pradesh Rajpatra Extraordinary, dated the 1st April, 1969). BE it enacted by the Legislative Assembly of the Union territory of Himachal Pradesh in the Nineteenth Year of

the Republic of India as follows:-

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Himachal Pradesh General Sales Tax Act, 1968.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall come into force at once.

2. Definitions :-

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

(a) "Assessing Authority" means any person authorised by the State Government to make any assessment under this Act;

[1] [(aa) "business" includes,-

(i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce, or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on 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; and

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

[2] [(aaa) casual dealer means any person who carries on (whether regularly or otherwise) occasional transaction of business of buying, selling, supplying or distributing the goods whether for cash or deferred payment, or for commission, remuneration or other valuable consideration;]

(b) "Commissioner" means the Excise and Taxation Commissioner appointed under sub-section (1) of section 3;

[3] [(c)"dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and includes:-

(i) a local authority, a body corporate, a company, a co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(ii) a factor, broker, commission agent, a dealers agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods

belonging to any principal, whether disclosed or not; [4] [X]

(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal 2 [; and]

[5] [(iv) every person engaged in the business of,--

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

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

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

(d) 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) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) 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;]

Explanations - (1) Every person who acts as an agent in Himachal Pradesh of a dealer residing outside this State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as-

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

(ii) an agent for handling of goods or documents of title relating to goods; or

(iii) an agent for the collection of the payment of the sale price of goods or as a guarantor for such collection or payment; and every local branch or office in Himachal Pradesh of a firm registered outside this State or a company or other body corporate, the principal office or headquarters whereof is outside this State, shall be deemed to be a dealer for the purpose of this Act.

(2) [6] [Every department, or its subordinate offices, of a Government] which whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, except in relation to any sale, supply

or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of this Act.

(3) For the purpose of this clause "Government" shall include the Central Government or the Government of any other State or Union Territory;]

(d) "declared goods" shall have the meaning assigned to that expression in clause (c) of section 2 of the Central Sales Tax Act, 1956;

[(dd) "Deputy Excise and Taxation Commissioner" means the Deputy Excise and Taxation Commissioner, appointed under sub-section (1) of section 3 of this Act, to assist the Commissioner and shall also include the [7] [Additional/ Joint Excise and Taxation Commissioner; and]

[8] (ddd) XX XX XX

[9] [(e) "goods" means every kind of movable [10] [property other than news-papers, actionable] claims, stocks, shares or securities, and includes growing crops, grass, trees and things attached to or fastened to anything permanently attached to the earth but which under the contract of sale, are agreed to be severed, and includes any class of goods:]

[11] [(ee) motor spirit means any inflammable hydrocarbon including any mixture of hydrocarbons or any liquid containing hydrocarbon, which is ordinarily used for providing reasonably efficient motive power for any form of motor vehicle;]

(f)"notification" means notification published under proper authority in the Rajpatra, Himachal Pradesh;

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

[12] [(h)"purchase" with all its grammatical or cognate expressions, means the acquisition of goods for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge and includes-

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

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

(iii) the delivery of goods on hire-purchase or any system of payment by instalments;

(iv) the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment

or other valuable consideration;

(v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) the supply, by way of or as part of any service or 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 a purchase of those goods by the person to whom such transfer, delivery or supply is made;]

(i) "registered" means registered under this Act;

[13] [(j) "sale" means any transfer of property in goods for cash or for deferred payment or for any other valuable consideration other than a mortgage, hypothecation, charge or pledge, and includes-

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

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

(iii) the delivery of goods on hire-purchase or any system of payment by instalments;

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

(v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) the 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 a purchase of those goods by the person to whom such transfer, delivery or supply is made;]

(k) "Schedule" means a Schedule to this Act;

(l) "State Government" or "Government" means the Government of Himachal Pradesh;

[14] [(II)"timber" includes trees when they have fallen, or have been felled or agreed to be felled and all wood whether cut up or fashioned or hollowed out for any purpose or not;]

[15] [(III)"Tribunal" means the Tribunal established under section 3-A;

(m)"turnover" includes, the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof;

Explanation - (1) The proceeds of any sale made outside Himachal Pradesh by a dealer, who carries on business both inside and outside Himachal Pradesh, shall not be included in the turnover.

(2) The turnover of any dealer in respect of transactions of forward contracts, in which goods are actually not delivered, shall not be included in the turnover.

(3) The proceeds of sale of any goods on the purchase of which tax is leviable under this Act, or the purchase value of any goods on the sale of which tax is leviable under this Act, shall not be included in the turnover of a dealer.

[16] [(4) In respect of transactions covered under sub-clause (iii) of clause (h) and sub-clause (iii) of clause (j) of this section the amount to be included in the turnover shall be the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of, or the acquisition of property in the goods to which the agreement relates and includes any sum as payable by the hirer under the hire purchase agreement by way of deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment whether that sum is to be or has been paid to owner or to any person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means, but does not include any sum payable as a penalty or as compensation or damages for breach of the agreement.

(5) The amount to be included in the turnover in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be its sale price;]

[17] [(mm) vehicle includes any carriage or conveyance used on land or in water or air;

(n) "year" means the financial year;

(o) "import" means the bringing of goods into Himachal Pradesh

from any place outside its limits [18]

[19] [(Repealed;]

(p) "small scale industries" means all industrial units with [20] [such capital investment, as may be prescribed] irrespective of the number of persons employed.

Explanation -In this clause "capital investment" means investment in plant and machinery only[.] [21]

[(q) ** ** **]

Footnotes:

1 . Clause (aa) added by Himachal Pradesh Act No. 7 of 1977 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.5.77 and the amendment shall be and shall always be deemed to have been made

2. Clause (aaa) inserted with effect from. 31.5.2000 by Act No. 13 of 2000 vide notification No. LLR D(6)10/2000-Legs- dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.2000 read with notification No.EXN-F(11)3/94 dated 29.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 29.5.2000

3. Clause (c) substituted by H.P. Act No. 7 of 1977 published in the Himachal Pradesh Rajpatra Extra-ordinary, dated 2.5.1977 and the amendment shall be and shall always be deemed to have been made. The previous provisions prior to this amendment were as follows:-

"(c) "dealer" means any person including a department of Government who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in *[the State] of Himachal Pradesh, irrespective of the fact that the main place of business of such person is outside the said territory and where the main place of business of any such person is not in **[the said State], dealer includes the local manager or agent of such person in Himachal Pradesh in respect of such business.

Explanations -(1) A co-operative society or a club or any association which sells or supplies goods to its members or purchases goods specified in Schedule C, is a dealer within the meaning of this clause. (2) A factor, a broker, a commission agent, a dealers agent, an auctioneer or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling, supplying or purchasing goods and who has, in the customary course of business, authority to sell goods belonging to principals or to

purchase goods on their behalf is a dealer. (3) For the purpose of this clause, "Government" will include the Central Government or the Government of any other State or Union territory." * Substituted for the words "Union territory" by A.O. 1973. **Substituted for the words "the said territory" by A.O. 1973.

4. In sub-clause (ii) of clause (c) the word "and" occurring at the end after the sign ";" omitted by Act No. 14 of 1994, published in R.H.P. (Extra-ordinary) on 21.10.1994.

5. In sub-clause (iii) of clause (c) for the sign ".", the sign and word ";and" substituted and thereafter the new sub-clause(iv) added by H.P. Act No. 14 of 1994 published in R.H.P. (Extra-ordinary) on 21.10.1994. The part (a) of the new sub-clause (iv) shall be deemed to have been added with effect from. the 2nd day of February, 1983 and the remaining provisions (i.e. parts (b) to (f)) shall be deemed to have been added with effect from. the 13th day of August, 1985.

6. In Explanation (2) of clause (c) for the words "A Government" the words "Every department, or its subordinate offices, of a Government" shall be deemed to have been substituted with effect from. 13.8.85 by H.P. Act No. 14 of 1994, published in R.H.P. (Extra-ordinary) on 21.10.1994.

7. For the word "Joint Excise and Taxation Commissioner" the words and sign "Additional/Joint Excise and Taxation Commissioner" substituted by Act No. 8 of 1999 notification No.LLR.D(6)5/99-Legs. dated 23.4.1999 published in R.H.P. (Extra-ordinary) on 23.4.1999.

8. Clause (ddd) omitted with effect from. 23.4.99 vide Act No. 8 of 1999. The provisions of clause (ddd) prior to 23.4.99 were as under:-

"Financial Commissioner" means Financial Commissioner" appointed or empowered to exercise the powers of the Financial Commissioner under this Act."

9. Clause "(e)" substituted by Act No. 7 of 1977 published in the Himachal Pradesh Rajpatra (Extra-ordinary) on 2.5.1977 and the amendment shall be and shall always be deemed to have been made. The previous provisions prior to this amendment Act were as follows:- " (e) "goods" means all kinds of movable property other than news-papers, actionable claims, stocks, shares or securities;"

10. The words inserted by HP Act No. 32 of 1978 published in RHP (Extra-ordinary) on 13.10.1978 with effect from. 13.10.1978.

11. Clause (ee) inserted with effect from. 31.5.2000 by Act No.13 of 2000, published in RHP (Extra-ordinary) on 25.5.2000 read with

notification No. EXN-F(11)-3/99 dated 29.5.2000, published in RHP (Extra-ordinary) on 24.5.2000.

12. Clauses "(h) and (j)" substituted by Act No. 8 of 1985 notified on 9/12.8.1985 with effect from. 13.8.1985 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 13.8.85. Previous provisions prior to 13.8.1985 which are not applicable thereafter, were as follows:-

"(h) "purchase" with all its grammatical or cognate expressions, means the acquisition of goods for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge;

(j) "sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation - transfer of goods on hire purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale;"

13. Clause " (j)" substituted by Act No. 8 of 1985 notified on 9/12.8.1985 with effect from. 13.8.1985 published in H.P. Rajpatra Extra-ordinary on 13.8.1985.

14. Clause (II) added by Himachal Pradesh Act No. 7 of 1977 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.5.1977 and the amendment shall be and shall always be deemed to have been made.

15. New clause (III) added by Act No.8 of 1999 vide notification No. LLRD (6) 5/99-Legs. dated 23.4.99 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 23.4.99.

16. In clause (m) the Explanations (4) and (5) added after Explanation (3), which shall be deemed to have been added with effect from the 13th day of August, 1985 by Act No. 14 of 1994, published in R.H.P. (Extra-ordinary) on 21.10.1994.

17. After clause (m), clause (mm) inserted with effect from. 31.5.2000 by Act No. 13 of 2000 vide notification No LLRD(6)10/2000-Legis dated 25.5.2000, published in RHP(Extra-ordinary) on 25-5-2000 read with notification No. EXN-F(11)-3/99 dated 29.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 29.5.2000..

18. Substituted for full stop by H.P. Act No. 2 of 1974.

19. Previously the clause (p) added with effect from. 1.12.1971 by H.P. Act No. 5 of 1972 which was repealed with effect from. 1.4.1973 by H.P. Act No. 11 of 1973 published in Extra-ordinary

Gazette on 24.5.1973.

20. In clause (p), for the words and figures "a capital investment of not more than rupees *35 lakhs", the words "such capital investment, as may be prescribed" substituted and shall be deemed to have been substituted with effect from. the 2nd day of November, 1991 by H.P. Act No. 14 of 1994, published in R.H.P. Extra-ordinary on 21.10.1994.

* The figures "35" substituted for the figure "7.5" vide Act No. 15 of 1987 with effect from. 25.5.1987 published in R.H.P. Extra-ordinary on 25.5.1987.

21. The sign "." substituted for semi-colon by H.P. Act No.5 of 1991 with effect from. 1-4-1991 published in Himachal Pradesh Rajpatra (Extra-ordinary) vide notification No. LLR-D(6) 4/91 dated 20-4-1991.

3. Taxing Authorities :-

(1) For carrying out the purposes of this Act, the State Government may appoint a person to be Excise and Taxation Commissioner, and such other persons to assist him as it thinks fit.

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

(3) All persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

3A. Establishment Of Tribunal :-

[1] (1) The State Government shall, by notification in the Rajpatra, Himachal Pradesh, establish one or more Tribunals, as it may deem fit, to exercise the jurisdiction, powers, authority and functions conferred on it by or under this Act.

(2) The constitution of the Tribunal, qualifications and age for appointment, terms of office, salaries, allowances and other conditions of service of the Presiding Officer or Member of the Tribunal appointed by the State Government shall be such as may be prescribed.

(3) The State Government may appoint such officers and officials, as may be required, to assist the Tribunal in the discharge of its functions under the Act.

Footnotes:

1. Sections 3-A, 3-B and 3-C inserted by Act No. 8 of 1999 vide notification No. LLRD(6) 5/99 Legs-dated 23.4.99 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 23.4.99.

Clause "q" added with effect from. 1.4.1979 by Act No. 12 of 1979 published in RHP (Extra-ordinary) on 16.6.1979 as under:--

(q) "surcharge" means the levy described in section section 6-A of this Act."

Subsequently, this clause omitted by Act No.5 of 1991 with effect from. 1.4.1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991.

3B. Jurisdiction :-

In the event of the State Government constituting more Tribunals than one, the State Government shall, by notification, define the local limits of jurisdiction of each Tribunal.

3C. Xxx :-

Notwithstanding anything contained in section 3-A, where there are more Tribunals than one, the State Government may, at any time by reason of insufficiency of work pending before the Tribunals dissolve any Tribunal and no Presiding Officer or Member of the Tribunal affected by such dissolution shall have any claim against the State Government.

4. Incidence Of Taxation :-

[1] [(1)] Omitted

[2] [(2)] Every dealer who does not deal exclusively in goods declared to be tax free under section 7 shall be liable to pay tax under this Act from the date on which his gross turnover during any year first exceeds the taxable quantum.]

(3) Notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

[3] [(4)] Omitted.

(5) Every dealer, whose liability to pay tax has ceased under the provisions of sub-section (4), shall again be liable to pay tax under this Act with effect from the date on which his gross turnover first exceeds the taxable quantum.

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

(a) in relation to any dealer who imports for sale or use in manufacturing or processing any goods in Himachal Pradesh, Nil;

(b) in relation to any dealer, who himself manufactures or produces any goods for sale [4] [2,00,000] rupees;

(c) in relation to any dealer, who runs a [5] [xx] hotel, restaurant, [xx] bakery or other similar establishment wherein [xx] food preparations including tea, are served, [6] [2,00,000] rupees;

(d) in relation to any particular classes of dealers not falling within clause (a), (b) and/or (c), such sum as may be prescribed; or

(e) in relation to any other dealer, [7] [4,00,000] rupees:

Provided that the registration of dealers already registered under this clause shall not be cancelled until their turnover in each of three consecutive years does not entitle them to cancellation under clause (b) of sub-section (6) of section 8.

Footnotes:

Sub-section (1) of section 4 omitted by Act No. 21 of 2000 vide notification No..LLRD(6) 18/2000 Legs-dated 21.9.2000 published on 21.9.2000

Sub-section (2) substituted by Act No. 21 of 2000 vide Notification No.LLR.D.(6)/2000 Legs., dated 21.9.2000 published in RHP (Extra-ordinary) dated 21.9.2000.

Sub-section (4) of section 4 omitted by Act No. 13 of 2000 vide notification No..LLRD (6) 10/2000Legs-dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.2000.

Substituted for figures "40,000" by Act No. 8 of 1999 vide notification No. LLR D (6) 5/99-Legislation dated 23.4.1999 published in R.H.P. (Extra-ordinary) on 23.4.1999.

The words "tandoor", "loh", "dhaba", "halwai shop" and "Indian" deleted from clause (c) of sub-section (6) of section 4 with effect from. 2.11.91 by Act No. 18 of 1991 published in R.H.P. (Extra-ordinary) on 2.11.1991.

Substituted for the figures "1,00,000" by Act No.13 of 2000 with effect from. 31.5.2000 vide notification No.LLR.D(6)-10/2000-Legs. dated 25.5.2000 published in RHP (Extra-ordinary) on 25.5.2000 read with Notification No.EXN-F(11)-3/94 dated 29.5.2000 published in RHP(Extra-ordinary) on 29.5.2000.

Substituted for the figures "3,00,000" by Act No.8 of 1999 vide notification No.LLR.D(6)5/99-Legs. dated 23.4.1999, published in RHP (Extra-ordinary) on 23.4.1999.

5. Liability Of A Dealer Registered Under Parliament Act No. 74 Of 1956 To Pay Tax :-

A dealer registered under the Central Sales Tax Act, 1956 who is not liable to pay tax under section 4 shall nevertheless be liable to pay tax under this Act on any sale or purchase made by him inside the [1] [State of Himachal Pradesh]:

Provided that nothing herein shall apply to a dealer who deals exclusively in goods declared tax free under section 7.

Footnotes:

Substituted for the words "Union Territory of Himachal Pradesh" by A.O. 1973.

5A. Levy Of Purchase Tax On Certain Goods :-

[1][2] Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule "B" from any source, and-

(i) uses them within the State in the manufacture of goods specified in Schedule

"B", or

(ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule "B", and sends the goods so manufactured outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State in any manner otherwise than by way of sale in the course of inter State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods equal to the rate as notified, under sub-section (1) of section 6, by the State Government.]

Footnotes:

1. Section 5-A added with effect from. 25.5.1987 by H.P. Act No. 15 of 1987 published in R.H.P. (Extra ordinary) on 25.5.1987. But with effect from. 1.8.1992 the provisions of section 5-A were amended vide H.P. Act No. 12 of 1992 published in R.H.P. (Extra ordinary) on 12.5.1992. The provisions of section 5-A prior to 1.8.1992 were as under:-

"5-A. Levy of purchase tax on certain goods - Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule "B" from any source, and-

(i) uses them within the State in the manufacture of goods specified in Schedule "B", or

(ii) uses them within the State in the manufacture of any goods other than those specified in Schedule "B" and sends the goods so manufactured outside the State in any manner other than by way of sale in the course of inter State trade or commerce or in the course of export out of the territory of India, or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State in any manner other than by way of sale in the course of inter State trade or commerce or in the course of export out of the territory of India, or

and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 6 as the State Government may direct."

The provisions of section 5-A remained in force from 1.8.1992 to 20.10.1994 were as under:-

"5-A. Levy of purchase tax on certain goods - Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule "B" from any source, and-

(i) uses them within the State in the manufacture of goods specified in Schedule "B", or

(ii) xx xx xx

(iii) uses such goods for a purpose other than that of resale within the State.

(iv) xx xx xx

and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods at such rates not exceeding the rate specified under sub-section (1) of section 6 as the State Government may direct."

2. Section 5-A substituted by Act No.14 of 1994 with effect from. 21.10.1994, published in RHP (Extra-ordinary) on 21.10.1994.

6. Rate Of Tax :-

(1) Subject to the provisions of this Act, there shall be levied on taxable turnover of a dealer a tax at such rates not exceeding [1] [ten] paise in a rupee as the Government may, by notification, direct:

[2] & [3] [Provided that a tax at such rate not exceeding 20 paise in a rupee, as may be so notified, may be levied on the sale of goods as specified in Schedule-A except on--

(a) Lime-stone on which a tax at the rate not exceeding 100 paise in a rupee, and

(b) Liquor (Country Liquor, Foreign Liquor and Indian Made Foreign Liquor including Beer but excluding Indian made cider and wines), [4] [all arms including rifles, revolvers, pistols and ammunition,] Polythene bags and Timber (but not including converted timber), on which a tax at the rate not exceeding 30 paise in a rupee, shall be levied:

Provided further that the Government, after giving by notification not less than thirty days notice of its intention so to do, may, by like notification, add to or delete from Schedule-A any goods, or otherwise amend the Schedule, and thereupon the Schedule shall be deemed to have been amended accordingly:

Provided further that the State Government may, for the purposes of item 25, issue notification retrospectively with effect from the 1st day of April, 2000:

Provided further that the rate of tax in respect of all declared goods, shall, unless a lower rate is fixed by the Government, by notification, be the maximum rate specified in clause (a) of section 15 of the Central Sales Tax Act, 1956: [5] [xx xx]

Provided further that in the case of goods specified in Schedule C, the tax shall be leviable and payable on the purchase thereof.

(2) The Government may, by notification, direct that in respect of such goods, other than the goods specified in [6] [Schedule C], and with effect from such date as may be specified in the notification, the tax under sub-section (1) shall be levied at the first stage of the sale thereof and on the issue of such notification, the tax on such goods shall be levied accordingly:

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the registered dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage.

Explanation - For the purposes of this sub-section, the first stage of sale in respect of any goods and in relation to any class of dealers shall be such as may be specified by the Government in the notification.

(3) In this Act, the expression "taxable turnover" means that part of dealers gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on--

(i) the sale of goods declared tax free under section 7;

[7] [(ii) sale to a registered dealer of goods liable to tax at the last stage of sale in Himachal Pradesh, other than (a) the sale of goods specified in Schedule C or (b) the sale of goods liable to tax at the first stage of sale under sub-section (2), and the same is declared by him in a prescribed form as being intended for resale in the State of Himachal Pradesh or in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India:

Provided that, in the case of such sales, a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars and inscribed on the bill or cash memorandum referred to in sub-section (2) of section 19 is furnished to the Assessing Authority by the dealer who sells the goods:

Provided further that no dealer shall be entitled to make any deduction from his turnover in respect of a sale made by him to a registered dealer with whom composition under sub-section (2) of section 12 has been made and is in force;]

[8] [(iii)] Omitted

(iv) sales or purchases of goods falling under section 41;

(v) the purchase of goods,-

(a) which are specified in Schedule C and are sold during the year to a registered dealer, or in the course of inter-State trade or commerce or in the course of export out of the territory of India; or

[9] [(b) which are referred to under section 14 of the Central Sales Tax Act, 1956, and are sold during the year in the course of inter-State trade or commerce or in the course of export out of the territory of India:]

Provided that in the case of a sale referred to in sub-paragraph (a) to a registered dealer, a declaration in the prescribed form and duly filled and signed by the resgistered dealer to whom the goods are sold is furnished by the dealer claiming deduction:

Provided further that the purchase of goods referred to in sub-

paragraph (b) remaining unsold within the period specified in that paragraph shall be deemed to be the purchase of the dealer claiming deduction during the year following; and

(vi) such other sales or purchases as may be prescribed;

[10] [x]

[11] [Explanation. - For the purposes of sub-clause (ii) the last stage of sale in Himachal Pradesh in respect of any goods means a stage of sale other than the first stage of sale specified by the Government in the notification issued under sub-section (2) of section 6; and]

(b) the amount of sales tax included in the gross turnover.

[12] [(4)] Omitted

Footnotes:

The word "seven" substituted for "six" with effect from. 1.6.1974 by H.P. Act No. 14 of 1974 published in R.H.P. Extra ordinary on 22.5.1974 and further word "ten" substituted for the word "seven" with effect from. 1.4.1991 by Act No. 5 of 1991 published in R.H.P. Extra ordinary on 20.4.1991.

Substituted for first proviso to sub-section (1) with effect from. 21.9.2000 by Act No. 21 of 2000 vide notification No. LLR.D(6)-18/2000 dated 21.9.2000 published in RHP (Extra-ordinary) on 21.9.2000.

The provisions of first proviso to sub-section (1) prior to 21.9.2000 were as under:-

(i) Between the period from 15.11.1995 to 18.8.1998 (Ordinance No. 4 of 1995 dated 13.11.1995 published in RHP (Extra-ordinary) on 15.11.1995 vide notification No.LLR.D(6)17/95-Legs. dated 14.11.1995, published in RHP (Extra ordinary) on 15.11.1995 read with Act No. 2/96 dated 24.2.1996)

"Provided that a tax at such rate not exceeding 15 paise in a rupees as may be so notified, may be levied on the sales of goods as specified in Schedule A except on Items 25, 34 and 36 thereof on which a tax at the rate not exceeding 30 paise in a rupee shall be levied. The Government, after giving by notification not less than thirty days notice of its intention so to do, may, by like notification, add to or delete from this Schedule, and thereupon this Schedule shall be deemed to have been amended accordingly:"

(ii) Between the period from 19.8.1998 to 30.5.2000 (Act No. 10 of 1998 published in RHP (Extra-ordinary) on 19.8.1998 vide notification No.LLR.D(6)10/98 Legs. dated 19.8.1998, published in RHP (Extra-ordinary) on 19.8.1998)

"Provided that a tax at such rate not exceeding 15 paise in a rupee,

as may be so notified, may be levied on the sales of goods as specified in Schedule A except on Items 25, 34 and 36 thereof on which a tax at the rate not exceeding 30 paise in a rupee and on item 37 thereof on which a tax at the rate not exceeding 100 paise in a rupee shall be levied. The Government, after giving by notification not less than thirty days notice of its intention so to do, may, by like notification, add to or delete from this Schedule, and thereupon this Schedule shall be deemed to have been amended accordingly:"; and

(iii) Between the period from 31.5.2000 to 20.9.2000 (Act No. 13 of 2000 published in RHP (Extra-ordinary) on 25.5.2000 vide notification No. LLR.D(6)-10/2000-Legs. dated 25.5.2000, published in RHP (Extra-ordinary) dated 25.5.2000 read with Notification No. EXN-F(11)-3/94 dated 29.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 29.5.2000.

"Provided that a tax at such rate not exceeding 15 paise in a rupee, as may be so notified, may be levied on the sales of goods as specified in Schedule A except on-

(a) items 25, 34 and 36 thereof on which a tax at the rate not exceeding 30 paise in a rupee; (b) item 37 thereof on which a tax at the rate not exceeding 100 paise in a rupee;

(c) items 38, 39, 40 and 41 thereof on which a tax at the rate not exceeding 20 paise in a rupee,

shall be levied. The Government, after giving by notification not less than thirty days notice of its intention so to do, may, by like notification, add to or delete from this Schedule, and thereupon this Schedule shall be deemed to have been amended accordingly."

The item "all arms including rifles, revolvers, pistols and ammunition" inserted in clause (b) with effect from. 30-07-2001 by Act No. 14 of 2001 vide notification No. LLR.D (6)-7/2000 dated 13.6.2001 published in RHP (Extra-ordinary) on 13.6.2001 read with Notification No. EXN-F(1)5/2000 dated 24-07-2001 published in RHP (Extra-ordinary) on 26-07-2001.

The sign and words "and such tax shall be leviable and payable at the stage of sale or purchase, as the case may be, and under the circumstances specified against such goods in Schedule D, omitted with effect from. 13.10.1978 by Act No.32 of 1978, published in RHP (Extra-ordinary) on 13.10.1978.

Substituted for "Schedule C and "D", with effect from. 13.10.1978 by Act No. 32 of 1978 published in R.H.P. (Extra ordinary) on 13.10.1978.

Sub-clause(ii) of clause (a) of sub-section (3) of section 6 substituted and shall be deemed to have been substituted with effect from. 1st day of January, 1991 by Himachal Pradesh Act No. 14 of 1994 published in Himachal Pradesh Rajpatra (Extra ordinary) on 21.10.1994. The previous provisions were as under:-

"(ii) sales to a registered dealer of goods, other than sales of goods specified in *Schedule C or of goods liable to tax at the first stage under sub-section (2), declared by him in a prescribed form as being intended for resale in the ** State of Himachal Pradesh or in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for use by him in the manufacture in Himachal Pradesh of any goods, other than goods declared tax free under section 7 for sale in the ** State of Himachal Pradesh and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that no dealer shall be entitled to make any deduction from his turnover in respect of a sale made by him to a registered dealer with whom composition under sub-section (2) of section 12 has been made and is in force:

Provided further that, in the case of such sales, a declaration duly filled and signed by the registered dealer to whom the goods are sold, containing the prescribed particulars and inscribed on the bill or cash memorandum referred to in sub-section (2) of section 19 is furnished by the dealer who sells the goods;"

* Substituted for "Schedules C and D with effect from. 13.10.1978 by Act No. 32 of 1978 published in Rajpatra, Himachal Pradesh (Extraordinary) on 13.10.1978.

**Substituted for the words "Union Territory of Himachal Pradesh" by A.O.1973.

The sub- clause (iii) of clause (a) omitted by Act No.21 of 2000 dated 21.9.2000 vide notification No.ILR.D(6)-18/2000-Legs. dated 21.9.2000 published in RHP (Extra-ordinary) on 21.9.2000. The provisions prior to 21.9.2000 of sub-clause (iii) were as under:-

(iii) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy:

Provided that in the case of such sales, a declaration in such form and in such manner as may be prescribed, duly filled and signed by the authorised officer of such undertaking to whom the goods are sold is furnished to the Assessing Authority by the dealer who sells

the goods;-

Paragraph (b) of sub-clause (v) of clause (a) of sub-section (3) of section 6 substituted with effect from. 13.10.1978 by Act No. 32 of 1978 published in R.H.P. (Extra-ordinary) on 13.10.1978. Provisions prior to 13.10.1978 were as under:-

"(b) which are referred to in Schedule D and are sold during the year or in the course of inter-State trade or commerce or in the course of export out of the territory of India;"

In sub clause (vi), the word "and" occurring at the end omitted with effect from. 21.10.1994 by H.P.Act No. 14 of 1994, published in Rajpatra, Himachal Pradesh (Extra-ordinary) on 21.10.1994.

The "Explanation" added by H.P. Act No. 14 of 1994 published in Rajpatra, Himachal Pradesh (Extra-ordinary) on 21.10.1994.

Sub-section (4) of section 6 omitted with effect from. 28.5.1986 by Act No. 15 of 1986 published in Rajpatra, Himachal Pradesh (Extra-ordinary) on 28.5.1986. Provisions prior to 28.5.1986 which are not applicable thereafter, were as under:-

"(4) Notwithstanding anything contained in this Act, the taxable turnover of any dealer for any period shall not include his turnover during that period in respect of any sale or purchase of declared goods at any stage other than the stage referred to in the second proviso to sub-section (1)."

6A. Section 6A :-

[1] [Declaration and certificates to be filed alongwith returns.- Every dealer claiming,-

(i) any deduction from his gross turnover, or

(ii) any part of his taxable turnover to be a sale to Government, or

(iii) any part of the taxable turnover to be liable to tax at concessional rate of tax or to an exemption under section 42-B of this Act,

shall furnish, alongwith the return to be furnished under sub-section (3) of section 12, to the assessing authority, the declaration or the certificate as required under this Act.]

Footnotes:

1. Section 6-A again inserted with effect from. 4.2.1995 by H.P.Act No.2 of 1995 published in Rajpatra, Himachal Pradesh (Extra-ordinary) on 4.2.1995.

7. Tax Free Goods :-

(1) No tax shall be payable on the sale of goods specified in the first column of Schedule B, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax free from time to time under this section.

(2) The Government, after giving by notification not less than thirty days notice of its intention so to do, may, by like notification, [1] [add to or delete from Schedule B any goods or otherwise amend the Schedule, and thereupon Schedule B] shall be deemed to be amended accordingly.

Footnotes:

1. In section 8 sub-section (1) after second proviso the third proviso added vide notification No. LLRD (6) 10/2000, dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra-ordinary) on 25.5.2000.

8. Registration Of Dealers :-

(1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a registration certificate [1] [:]

[Provided that nothing herein shall apply to a dealer who deals exclusively in such goods on which tax has been proved to have been levied at the first stage of the sale thereof under sub-section (2) of section 6 and that such a dealer is not the first selling dealer in respect of those goods in the State of Himachal Pradesh:

Provided further that the dealer referred to in the preceding proviso maintains proper accounts in respect of his business and possesses and furnishes to the Assessing Authority, the certificate referred to in sub-section (2) of section 6, in the prescribed manner, to the effect that the tax on the sales of such goods has been paid at the first stage of sale thereof.]

[2] [Provided further that in the case of a casual dealer, on payment of a fee of Rs. 50/-, the Assessing Authority or the Officer, incharge of the check post or barrier or any other officer inspecting the goods at any other place, may dispense with the requirement of a valid certificate of registration under this section.

[3] [(2) Any person intending to establish a business in Himachal Pradesh for the purpose of manufacturing goods for sale may, notwithstanding that he is not liable to registration under sub-section (1), be granted a registration certificate subject to such conditions and in the manner as may be prescribed, and such person when granted a registration certificate shall, for so long as such certificate is in force, be liable to pay tax under the Act:

Provided that grant of such a certificate of registration shall be subject to the conditions that if such person fails to establish the business within the period specified in the certificate or fails to

comply with any of the conditions specified therein, he shall be liable by order of the Assessing Authority, to pay a penalty equivalent to one-half of the amount of tax which would have been payable by him in respect of all the goods purchased by him as if he had not been registered under this sub-section.

(3) Every dealer required by sub-section (1) to be registered and every person who may be granted registration certificate under sub-section (2) shall make application in this behalf in the prescribed manner to the Assessing Authority.

(4) If the Assessing Authority is satisfied that an application for registration made under sub-section (3) is in order, he shall, in accordance with such rules and on payment of such fee and subject to such conditions as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form.

(4) When any dealer fails to apply for registration in contravention of sub-section (1) of this section, the Assessing Authority shall register such dealer and grant him a certificate of registration and such registration shall take effect as if it had been made under sub-section (4) of this section on the dealers application.

(5) The Assessing Authority may, by order,-

(a) amend certificate of registration on the dealers application if the dealer or his legal representative furnishes the information that he-

(i) has transferred his business, or

(ii) has changed the name (constitution) or nature of his business, or

(iii) wants to open a new place of business or make any change either in the places of business or in the class or classes of goods specified in his certificate of registration for resale or for use in manufacture of goods for sale;

(b) suspend a certificate of registration, without prejudice to any other penalty, if the dealer or person has violated any provision of this Act or rules made thereunder;

(c) cancel a certificate of registration, on dealers or, as the case may be, of his legal representatives application or suo-moto, without affecting liability to pay tax till; such cancellation,-

(i) if the dealer sells or otherwise disposes of his business or any place of business or discontinues his business, or

(ii) if the dealer dies, or

(iii) for any other sufficient cause including misuse of the certificate of registration or cessation of liability to payment of tax under this Act:

Provided that no order affecting any person adversely shall be

made under clause (b) and (c) of this sub-section without affording him a reasonable opportunity of being heard; and
(d) renew a certificate of registration for such period and in the manner and on payment of such fee as may be prescribed.}

Footnotes:

The sign ":" substituted for sign "." And thereafter provisos added with effect from. 1.4.1991 by Act No. 5 of 1991 vide notification No. LLRD (6) 4/91, dated 20.4.1991 with effect from. 20.4.1991.

In sub-section (1) "after second proviso, third proviso added by Act No.13 of 2000 with effect from. 31.5.2000 vide notification No. LLR.D.(6)-10/2000-Legs. dated 25.5.2000 published in RHP(Extra-ordinary) on 25.5.2000 read with notification No.EXN-F(11)-3/99 dated 29.5.2000 published in RHP (Extra-ordinary) dated 29.5.2000.

Sub-sections (2), (3), (4), (5) and (6) of section 8 substituted vide notification No. LLRD (6)18/2000, dated 21-9-2000 published in Rajpatra, Himachal Pradesh (Extra-ordinary) on 21-9-2000.

8A to 10C. Omitted.- [1] Omitted.

Footnotes:

1. Sections 8-A, 9,10, 10-A, 10-B and 10-C omitted with effect from. 21.9.2000 by Act No. 21 of 2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 21.9.2000 vide notification No. LLR D (6) 18/2000-Legislation dated 21.9.2000. The previous provisions of sections 8-A,9,10,10-A,10-B and 10-C were as under:-

8A. Renewal Of Registration Certificate :-

Notwithstanding anything contained in this Act, every registered dealer or class of registered dealers holding registration certificate on a date to be notified by the State Government, shall get the registration certificate renewed within such period and on payment of such fee as may be prescribed."

9. Voluntary Registration :-

(1) Any dealer except one dealing exclusively in goods declared tax free under section 7 whose gross turnover during a year exceeds 15,000 rupees may, notwithstanding that he may not be liable to pay tax under section 4, apply in the prescribed manner to the prescribed authority for registration under this Act.

(2) The provisions of sub-sections (3) and (4) and clause (a) of sub-section (6) of section 8 shall apply in respect of applications for registration under this section.

(3) Every dealer who has been registered upon application made

under this section shall, for so long as his registration remains in force, be liable to pay tax under this Act whether his gross turnover exceeds the taxable quantum or not.

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

(5) Subject to the provisions of sub-section (4), a dealer registered upon application made

10. Section 10 :-

11. Security From Certain Classes Of Dealers :-

[1] (1) The Commissioner or any other person appointed to assist him under sub-section (1) of section 3, if it appears to him to be necessary so to do for the proper realisation of the tax levied under this Act, may, for reasons to be recorded in writing, impose as a condition of the issue of a certificate of registration to a dealer, or of the continuance in effect of such certificate issued to any dealer, a requirement that the dealer shall give security in the manner prescribed for such amount as may be specified in the order.

(2) No dealer shall be required to furnish security under sub-section (1), unless he has been given an opportunity of being heard and the security that may be required to be furnished by any dealer under the aforesaid sub-section shall be to the satisfaction of the authority prescribed in sub-section (1).

(3) Where the security furnished by a dealer under sub-section (1) is in the form of a surety bond and the surety becomes insolvent or is otherwise incapacitated or dies or withdraws, the dealer shall, within fifteen days of the occurrence of any of the aforesaid events, in- form the authority granting the certificate of registration and shall within thirty days of such occurrence furnish a fresh surety bond.

(4) The authority granting the certificate of registration may, by an order in writing, for goods and sufficient cause, forfeit the whole or any part of the security furnished by a dealer for realising any amount of tax or penalty payable by a dealer:

Provided that no order shall be passed under this sub-section without giving the dealer and the surety a reasonable opportunity of being heard.

(5) Where by reason of an order under sub-section (4), the security furnished by any dealer is rendered insufficient, he shall make up

the deficiency in such manner and within such time as may be prescribed

(6) The authority granting a certificate of registration may, on application by the dealer, order the refund of security furnished by him or any part thereof, if the same is not required for the purposes of this Act.]

Footnotes:

1. Section 11 alongwith its heading substituted with effect from. 28.5.86 by Act No. 15 of 1986 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 28.5.1986. Previous provisions prior to 28.5.1986 which are not applicable thereafter were as under:-

"11. Security from certain class of dealers - The Commissioner or any officer authorised by him in writing in this behalf, if it appears to him to be necessary so to do for proper realisation of the tax levied under this Act, may impose for the reasons to be recorded in writing as a condition of the issue of a registration certificate to a dealer or of the continuance in effect of such certificate issued to any dealer a requirement that the dealer shall give security upto an amount and in the manner approved by the Commissioner for the payment of the tax for which he may be or become liable under this Act."

12. Payment Of Tax And Returns :-

(1) Tax payable under the Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

(2) The Commissioner, may in the public interest and subject to such conditions as he may deem fit, accept from any class of dealers, in lieu of the amount of the tax payable under this Act for any period, by way of composition, a lump sum to be determined and to be paid at such intervals and in such manner as may be prescribed, and thereupon, during the period such composition remains in force, the provisions of this Act and the rules made thereunder relating to the filing of returns and the maintenance of accounts by such dealer shall not apply to them.

(3) Such dealers as may be required so to do by the Assessing Authority by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such authority as may be prescribed.

[1] (4) Before a registered dealer furnishes the return required by sub-section (3), he shall, in the prescribed manner, pay into a Government Treasury or the [2] [Scheduled Bank which is a

treasury bank], or at the office of the [3] [Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-charge of the District}, the full amount of tax due from him under the Act according to such returns and shall furnish along with the returns a receipt from such treasury, bank or office of the 2[Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-charge of the District] showing the payment of such amount:

Provided that no payment of such amount shall be accepted at the office of the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-Charge of the District save through a crossed cheque or bank draft payable at a local branch of a Scheduled Bank in favour of the assessing authority:

[4] [Provided further that when a dealer makes payment through a Scheduled Bank other than the treasury bank, he shall obtain from such bank a certificate, as may be prescribed, to the effect that the bank has remitted the amount of tax to the treasury bank on the dealers directions and on production of such certificate to the Assessing Authority the dealer shall be deemed to have paid the tax on the date following the date on which such certificate is issued by such bank:

Provided further that in case of payment through a Scheduled Bank which is located at a station other than that of the treasury bank, the dealer shall need to procure the prescribed certificate from the concerned bank, as mentioned under the preceding proviso, at least three days before the expiry of the due date prescribed under sub-section (3) for filing the return and in that case the dealer shall be deemed to have made the payment by due date:

Provided further that where the payment is made through a crossed cheque, such crossed cheque must be delivered in the office of the assessing authority concerned, not less than ten clear days before the expiry of the due date prescribed under sub-section (3) for filing the return, and the dealer shall be deemed to have made the payment on the date on which such crossed cheque, after its presentation in the bank, is actually credited into the Government account and necessary receipt is issued by the bank in favour of the dealer:

Provided further that where the payment is made through a crossed cheque and the cheque is dishonoured, the dealer shall be deemed to have not made the payment and shall be liable to any action, which may be taken for not making payment under the Act or the rules framed thereunder.

Explanation - For the purposes of this sub-section "Scheduled

Bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(5) If any dealer discovers any omission or other error in any return furnished by him, he may, at any time, before the date prescribed for the furnishing of the next return by him, furnish a revised return, and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment, in the manner prescribed in sub-section (4), of extra amount.

[5] [(6)(a) If a dealer fails to furnish the returns by the prescribed date as required under sub-section (3), the dealer shall be liable to pay, by way of penalty, a sum equal to Rs.25/- per day for delay in furnishing the return upto 10 days, whereafter the penalty shall be Rs. 50/- per day till the default continues; and

(b) if a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (4), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after giving such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, a sum which shall not be less than ten per centum, but which shall not exceed one-and-a-half times of the amount of tax to which he is assessed or is liable to be assessed under section 14 in addition to the amount of tax to which he is assessed or is liable to be assessed.]

(7) If a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods, or has concealed any particulars of his sales or purchases or has furnished to, or produced before, any authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount which shall not be less than [6] [twenty-five per centum], but which shall not exceed one and a half times of the amount of tax to which he is assessed or is liable to be assessed.

Footnotes:

Sub-section (4) substituted with effect from. 1.4.1979 by Act No. 12 of 1979 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 16.6.1979. Previous provisions of this sub-section were as under:-

"Before any registered dealer furnishes the return required by sub-

section (3), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India, the full amount of tax due from him under this Act according to such returns and shall furnish, alongwith the returns, a receipt from such treasury or bank showing the payment of such amount."

Substituted for the words "Reserved Bank of India" with effect from. 21.9.2000 by Act No.21 of 2000 vide notification No.LLR.D (6)18/2000-Legs. dated 21.9.2000, published in RHP (Extra-ordinary) on 21.9.2000.

The words "Assistant Excise and Taxation Commissioner or Excise and Taxation Officer Incharge of the District" substituted for the words "District Excise & Taxation Officer" with effect from. 2.11.1991 by Act No. 18 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.11.1991.

The provisos added by Act No. 21 of 2000 dated 21.9.2000 vide notification No.LLR.D(6)-18/2000 Legs. dated 21.9.2000 published in RHP (Extra-ordinary) on 21.9.2000.

Sub-section (6) substituted with effect from. 31.5.2000 by Act No. 13 of 2000 dated 25.5.2000 vide notification No. No. LLRD (6) 10/2000-Legs., dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.2000 read with Notification No. EXN-F(11)-3/99 dated 29.5.2000 published in RHP(Extra-ordinary) on 29.5.2000. The provisions prior to 31.5.2000 were as under:

"If a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (3) or sub-section (4), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum which shall not be less than ten percentum, but which shall not exceed one-and-a-half times of the amount of tax to which he is assessed or is liable to be assessed under section 14 in addition to the amount of tax to which he is assessed or is liable to be assessed, and where no tax is payable, a sum not exceeding one hundred rupees."

The words "twenty -five percentum" substituted for the words "ten percentum" vide H.P. Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on vide notification No.LLRD(6) 4/91 dated 20.4.1991 with effect from. 1.4.1991.

12A. Tax Deduction From The Bills/Invoices Of The Work Contractors :-

[1] (1) Notwithstanding anything to the contrary contained in section 13, every person making any payment or discharge of any liability on account of valuable consideration payable--

(a) for the transfer of property in goods, whether as goods or in some other form, involved in the execution of works contract, and

(b) for the transfer of property in goods on account of sales of such goods made to the Government of India or to any State Government, shall deduct an amount not exceeding four per centum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractor or by the dealer selling such goods, as payable by the persons:

Provided that no deduction of such amount shall be made in respect of any transfer of property in goods, the turnover of which is deductible, from the dealers gross turnover, under sub-section (3) of section 6 of the Act:

Provided further that no such payment or discharge of any bill raised by the works contractor or dealer selling such goods shall be made without deductions:

Provided further that if the State Government satisfied that it is necessary to do so in the interest of the State revenue, it may notify the names/posts of such persons who shall be competent persons to make such deduction.]

(2) The deduction referred to in sub-section (1) shall be made in the manner, which may be prescribed.

(3) The payment of such deduction into the Government treasury shall be the responsibility of the person making such deduction.

(4) The person making such deduction shall issue deduction certificate in the prescribed manner to the person or dealer from whose bill or invoice, such deduction has been made.

(5) If any person contravenes any or all of the provisions of sub-sections (1), (3) and (4), 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 of tax deductible under sub-section (1).

(6) The provisions of sections 16 and 16-A 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.]

Footnotes:

1. Sub-section (1) substituted with effect from. 31.5.2000 by Act No. 13 of 2000 dated 25.5.2000 vide notification No.LLR. D (6) 10/2000-Legs- dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.2000 read with notification No.EXN-F(11)-3/99 dated 29.5.2000 published in RHP (Extra-ordinary) on 29.5.2000. The provisions of sub-section (1) prior to 31.5.2000 were as under:-

"12-A. (1) Notwithstanding anything to the contrary contained in section 13, every person making any payment or discharge of any liability on account of valuable consideration payable for the transfer of property in goods, whether as goods or in some other form, involved in the execution of works contract shall deduct an amount not exceeding four per centum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractor as payable by the persons:

Provided that no such payment or discharge of any bill raised by the works contractor shall be made without deductions:

Provided further that if the State Government is satisfied that it is necessary to do so in the interest of the State revenue, it may notify the names/posts of such persons who shall be competent persons to make such deduction."

13. Prohibition Against Collection Of Tax In Certain Cases :-

[1] (1) No person shall collect any sum by way of tax in respect of sale or purchase of any goods on which no tax is payable under this Act.

(2) No person, who is not a registered dealer and liable to pay tax

in respect of any sale or purchase, shall collect on the sale or purchase of any goods any sum by way of tax from any other person and no registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under this Act.

(3) If any person, not being a dealer liable to pay tax under this Act, collects any sum by way of tax, or being a registered dealer collects any amount by way of tax in excess of the tax payable by him or otherwise collects tax in contravention of the provisions of sub-sections (1) and (2) he shall be liable to pay, in addition to any tax for which he may be liable, a penalty of an amount not exceeding five hundred rupees, or double the amount so collected, whichever is greater.

(4) If the Commissioner, or any person appointed to assist him under sub-section (1) of section 3, in the course of any proceedings under this Act or otherwise, has reason to believe that any person has become liable to pay penalty under sub-section (3), he shall serve on such person a notice in the prescribed form requiring him to show cause why a penalty as provided in sub-section (3) should not be imposed on him.

(5) The Commissioner or any person appointed to assist him under sub-section (1) of section 3 shall thereupon hold an enquiry and shall make such order as he thinks fit.]

Footnotes:

1. Section 13 substituted and shall always be deemed to have been substituted by Act No. 7 of 1977 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.5.1977. Previous provisions were as under:-

"13. Unauthorised collection of tax to be paid to the State Government - (1) No dealer, who is not liable to pay tax under this Act, shall collect any amount by way of tax under this Act, nor shall a dealer liable to pay tax under this Act make any such collection, except in accordance with the provisions of this Act.

(2) If any dealer, who is not liable to pay tax under this Act, collects any amount purporting to be by way of tax under this Act, such dealer shall pay over to the State Government, within such time and in such manner as may be prescribed, the amount so collected.

(1) If any dealer liable to pay tax under this Act collects tax on any transaction not liable to tax under this Act or in excess of the tax leviable under this Act, such dealer shall pay over to the State Government, in addition to the tax payable, the amount so collected within such time and in such manner as may be

prescribed.

(2) If the amount of tax collected by any dealer under sub-section (2) or sub-section (3) is not paid to the State Government within the time, and in the manner, prescribed, it shall be recoverable as arrears of land revenue:

Provided that the payment of any claim to such amount made by the person who paid it to such dealer shall be the liability of the State Government."

14. Assessment Of Tax :-

(1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. [1] [(1-A). Notwithstanding anything contained in this Act, if the Government considers it necessary and expedient, in public interest so to do, it may in respect of a dealer, whose gross turnover in a year does not exceed [2] [fifty] lakh rupees, notify, for any financial year, a scheme of self-assessment under the Act:

Provided that in case any dealer, whose taxable turnover has been assessed under the self-assessment scheme, is found to have evaded the tax, the Assessment Authority shall, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the amount of tax assessed, a sum which shall not be less than one hundred per centum but which shall not exceed one and a half times of the amount of tax found to have been evaded and assessed.]

(2) If the assessing authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon after-wards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(4) If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the Assessing Authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

(6) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the assessing authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent period and in cases where such dealer has wilfully failed to apply for registration, the assessing authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum [3] [which shall not be less than fifteen per centum, but which shall not exceed] one and a half times that amount.

[4] [(7) The amount of any tax, penalty or interest payable under this Act shall be paid by the dealer in the manner prescribed by such date as may be specified in the notice issued by the assessing authority for the purpose and the date so specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice:

Provided that the assessing authority may, with the prior approval of the Excise and Taxation Officer in-charge of the district, extend the date of such payment, but not more than 90 days, or allow payment by monthly instalments not exceeding three against an adequate security or a bank guarantee.]

(8) If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified therefore in the notice of assessment or in the order permitting payment in instalments, the Commissioner or any person appointed to assist him under sub- section (1) of section 3 may after giving such dealer an opportunity of being heard, impose on him a penalty not exceeding in amount the sum due from him.

(9) Any assessment made under this section shall be without

prejudice to any penalty imposed under this Act.

Footnotes:

1. Substituted for sub-section (1-A) by Act No.8 of 1999 dated 23.4.1999 vide notification No.LLRD (6) 5/99 dated 23.4.99 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 23.4.99. The provisions of sub-section (1-A) prior to 23.4.1999 were as under:-

" 1-A. If the taxable turnover of a dealer registers an increase of fifteen percent or upwards over the turnover of the preceding year as determined under this section and fulfils such other conditions as the State Government may deem fit to prescribe in this behalf, the assessing authority may dispense with the presence of such dealer and the production of an evidence by him under sub-section (1)."

2. Substituted for the words "twenty five" by Act No. 13 of 2000 dated 25.5.2000 vide notification No.LLR D (6) 10/2000-Legs. dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.2000.

3. Substituted for the words "not exceeding" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991, with effect from. 1.4.1991.

4. Sub-section (7) substituted with effect from. 1.4.1979 by Act No of 1979 published in R.H.P Extra-ordinary on 16-6-1979. Provisions prior to 1-4-1979 which are not applicable thereafter were as under:-

(7) The amount of tax:-

(a) due where the returns are furnished without receipt showing full payment thereof, or

(b) assessed under sub-sections (1), (3), (4) and (5), less the sum, if any, already paid by the dealer in respect of the said period, or

(c) assessed under sub-section (6) together with the penalty directed to be paid under that sub-section, shall be paid by the dealer into a Government treasury or the Reserve Bank of India by such date as may be specified in a notice issued by the Assessing Authority for this purpose and the date to be specified shall be not less than thirty days from the date of service of such notice:

Provided that the Assessing Authority may, in respect of any particular dealer and for reason to be recorded in writing, extend the date of such payment or allow such dealer to pay the tax due and the penalty, if any, by instalments."

14A. Assessment Of A Casual Dealer :-

(1) A casual dealer who is registered under this Act, shall be assessed like any other registered dealer under section 14.

(2) A casual dealer who is not registered shall, immediately on completion of transaction of sale or purchase for which he is liable to pay tax, report to the Assessing Authority having jurisdiction with reference to the place of such transaction or to the Officer Incharge of the nearest check-post or barrier, the amount of sale or purchase price and the tax payable thereon and shall deposit the amount of tax with such Assessing Authority or such Incharge of the check-post or barrier within such time and in such manner as such authority or incharge may direct:

Provided that if a casual dealer desires voluntarily to pay the tax in advance in respect of the goods which such dealer intends to sell or purchase, he may pay the amount of tax on the sale or purchase value of such goods enhanced by ten percent to the Assessing Authority or the Officer-Incharge of the nearest check-post or barrier.

(3) Where a casual dealer fails to make a report as required in sub-section (2), the Assessing Authority having jurisdiction or Excise & Taxation officer, Incharge of the nearest check-post or barrier may require such casual dealer to make a report of the sale or purchase price and the tax due, failing which such Assessing Authority or such Incharge of the check post or barrier may assess to the best of its judgement the amount of tax due and direct the casual dealer to pay the amount of tax within such time and in such manner as it may direct.

(4) Where a casual dealer fails to pay the tax as directed by the Assessing Authority or the Excise & Taxation Officer, Incharge of the check-post or barrier under sub-sections (2) and (3), the goods belonging to such casual dealer shall be detained until the tax is paid or adequate security for payment of tax is furnished.]

Footnotes:

1. Section 14-A inserted with effect from. 31.5.2000 by Act No. 13 of 2000 dated 25.5.2000 vide notification No LLRD (6) 10/2000 Legs dt 25-5-2000 published on 25-5-2000 read with notification No.EXN-F(11)-3/99 dated 29.5.2000 published in RHP (Extra-ordinary) on 29.5.2000.

15. Re-Assessment Of Tax :-

[1] [(1) If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment in any year, the Assessing Authority may, at any time within three years from the date of assessment under section 14, proceed to re-assess the tax payable on the turnover which has been under-assessed or has escaped assessment:

Provided that the Assessing Authority may also take action to impose the penalty and interest under this Act:

Provided further that no order of re-assessment or imposition of penalty and interest shall be made unless the dealer is afforded a reasonable opportunity of being heard in the prescribed manner.]

(2) An Assessing Authority or any such authority as may be prescribed may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify any clerical or arithmetical mistake apparent from the record.

Footnotes:

1. Sub-section,(1) substituted w e.f.4-2-1995 by H.P Act No.2 of 1995, published in R.H.P (Extra -ordinary) on 4-2-1995. The previous provisions were as under;-

"(1) If in consequence of definite information which has come into his possession, the assessing authority discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment in any year, the Assessing Authority may, at any time within five years following the close of the year for which turnover is proposed to be re-assessed, and after giving the dealer a reasonable opportunity in the prescribed manner of being heard, proceed to re-assess the tax payable on the turnover which has been under-assessed or has escaped assessment."

16. Tax And Penalty Recoverable As Arrears Of Land Revenue :-

The amount of any tax and penalty imposed [1] [or interest payable under this Act, which remains unpaid after the due date, shall be recoverable as arrears of land revenue.

Footnotes:

1.The words inserted with effect from. 1.4.1979 by HP Act No. 12 of 1979 published in RHP (Extra-ordinary) on 16.6.1979.

16A. Special Mode Of Recovery :-

(1) Notwithstanding anything contained in section 16 or any law or contract to the contrary, Commissioner or any officer other than an Excise & Taxation Inspector, appointed under section 3 to assist the Commissioner, may, at any time or from time to time, by notice in writing, a copy of which shall be sent to the dealer at his last address known to the officer issuing the notice, require -

(a) any person from whom any amount is due or may become due to a dealer who has failed to comply with a notice of demand for any amount due under this Act;

(b) any person who holds or may subsequently hold any money for or on account of such dealer,

to pay into the 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 time specified in the notice (not being before the money becomes due or it is held), so much of the money as is sufficient to pay the amount due from the dealer in respect of the arrears of the tax, interest and penalty under this Act, or the whole of the money when it is equal to or less than that amount.

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

(2) The officer 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 treasury receipt for such payment shall constitute a good and sufficient discharge of the liability of such person 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 officer who issued the notice that the sum 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, then 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) Any amount of money which a person is required to pay under sub-section (1), or for which he is personally liable to the State Government under sub-section (4) shall, if it remains un-paid be recoverable as an arrear of land revenue.

(7) The provisions of this section shall be without prejudice to any action that may be taken for the recovery of the arrears of tax, interest and penalty, if any, due from the dealer.]

Footnotes:

1. Section 16-A inserted with effect from. 2.11.1991 by H.P. Act No. 18 of 1991, published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.11.1991.

16B. 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 penalty including interest, if any, payable by a dealer or any other person under this Act shall be a first charge on the property of the dealer or such other person.]

Footnotes:

1. Section 16-B inserted with effect from. 21.10.1994 by H.P. Act No. 14 of 1994 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 21.10.1994.

17. Period Of Limitation For Completion Of Assessment Or Re-Assessment Not To Apply To Certain Cases :-

(1) Notwithstanding the provisions relating to the period of limitation contained in section 14 or section 15 or in any other provision of this Act, assessment or re-assessment may be made at any time in consequence of, or to give effect to, any order made by any court or other authority under this Act.

(2) Where the assessment proceedings relating to any dealer remained stayed under the orders of any court or other authority for any period, such period shall be excluded in computing the period of limitation for assessment or re-assessment specified in section 14 or section 15 or in any other provision of this Act.

17A. Payment Of Interest :-

[1] [(1) If any dealer fails to pay the amount of tax due from him under this Act except to the extent mentioned in sub-section (2), he shall, in addition to the

amount of tax, be liable to pay simple interest on the amount of tax due and payable by him at the rate of one per centum per month, from the date immediately following the last date on which the dealer should have either filed the return or paid the tax under this Act, for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues.]

(2) If the amount of tax or penalty due from a dealer is not paid by him within the period specified in the notice of demand or, if no period is specified within thirty days from the service of such notice, the dealer shall, in addition to the amount of tax or penalty, be liable to pay simple interest on such amount at the rate of one per centum per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires, for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues:

Provided that where the recovery of any tax or penalty is stayed by an order of any court, the amount of tax or penalty shall, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount ultimately found to be due and such interest shall be payable from the date the tax or penalty first became due.

(3) The amount of interest payable under this section shall-

(i) be calculated by considering if part of a month is more than fifteen days as one month and any amount if more than fifty rupees but less than one hundred rupees as one hundred rupees;

(ii) for the purposes of collection and recovery, be deemed to be tax under this Act;

(iii) be in addition to the penalty, if any, imposed under this Act.]

Footnotes:

1. Sub-section (1) of section 17-A substituted with effect from. 1.4.1991 by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991. The provisions prior to 1.4.1991 were as under:- "(1) If any dealer fails to pay the amount of tax due from him as required by sub-section (4) of section 12, he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due from him at the rate of one per centum per month from the date immediately following the last date for the submission of the return under sub-section (3) of that section, for a period of one month and thereafter at the rate of one and a half per centum, per month till the default continues."

18. Refund :-

[1] (1) The assessing authority either suo-moto or on application shall in the prescribed manner refund to a registered dealer or any other person any amount of tax, interest or penalty paid by such dealer or any other person under this Act,-

(a) if the amount of tax, penalty or interest so paid is in excess of the amount due from him under this Act; or

(b) if the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce;

either by a refund voucher or, at the option of the [2] [dealer or any other person], by adjustment of the amount so paid with the amount due from him, in respect of any other period:

Provided that the refund under clause (b) shall be subject to such conditions, as may be prescribed:

Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of three years from the date on which such claim accrues.

Explanation - (1) For the purpose of this sub-section, the expression "in the course of inter-State trade or commerce" shall have the meaning assigned to it by section 3 of the Central Sales Tax Act, 1956

(2) Notwithstanding anything contained in sub-section(1), the assessing authority shall first adjust the amount to be refunded towards the recovery of any amount due from the dealer on the date of such adjustment, and shall thereafter refund the balance, if any.

(3) Where any amount required to be refunded by the assessing authority to any person by virtue of an order issued under this Act is not refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the rate of one per centum per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half per centum per month till the refund is made:

Provided that for the purpose of calculation of the interest, if part of a month exceeds fifteen days, shall be considered as one month and any amount less than one hundred rupees but exceeds fifty rupees shall be considered as one hundred rupees.

(4) If the delay in allowing refund within the aforesaid period of ninety days is for reasons beyond the control of the assessing authority or attributable to the dealer, whether wholly or in part, the period of such delay shall be excluded from the period for which interest is payable.

(5) If any question arises whether any period is to be excluded for the purposes of calculation of interest under sub-section (4) the same shall be referred to the Commissioner or such other officer as the State Government may, by notification, appoint whose decision shall be final.

(6) Where an order allowing refund is the subject-matter of any appeal or further proceedings or where any other proceedings under this Act are pending, and the assessing authority is of the opinion that the refund is likely to adversely affect the recovery, the assessing authority may withhold the refund and refer the case to the Commissioner whose orders shall be final.

(7) The period during which the refund remains with-held under sub-section(6) shall be excluded for the purpose of calculation of

interest under this section.]

Footnotes:

Section 18 substituted with effect from. 1-4-1979 by Act No.12 of 1979 published in RHP (Extra-ordinary) on 16-6-1979. Provisions prior to 1-4-1979 which are not applicable thereafter, were as under:-

"18. The Assessing Authority shall in the prescribed manner refund to a registered dealer applying in this behalf any amount of tax paid by such dealer under this Act-

(a) if the amount of tax so paid is in excess of the amount due from him under this Act; or

(b) if the amount of tax so paid is in respect of the sale or purchase of any declared goods and such goods are sold in the course of inter-State trade or commerce;

either by a refund voucher or at the option of the dealer by deduction of the tax so paid from the amount of tax due from him in respect of any other period:

Provided that the refund under clause(b) shall be subject to such conditions as may be prescribed:

Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of three years from the date on which such claim accrues.

Explanation - For the purposes of this section, the expressions "declared goods" and "in the course of inter-State trade or commerce" shall have the meanings assigned to them by clause (c) of section 2 and section 3 respectively of the Central Sales Tax Act, 1956."

Substituted for the word "dealer" by Act No.8 of 1999 by Notification No.LLR.D(6)5/99 dated 23.4.1999 published in R.H.P. Extra-Ordinary) on 23.4.1999

19. Accounts :-

(1) Every registered dealer or other dealer on whom a notice has been served to furnish returns under sub-section(3) of section 12 shall keep a true account of the value of goods bought and sold by him, and if the Assessing Authority considers that such account is not sufficiently clear and intelligible to enable him to make a proper check of the returns referred to in that sub-section, he may require such dealer by notice in writing to keep such accounts including records of sales as he may, subject to anything that may be prescribed in that behalf in writing, direct.

(2) Every registered dealer shall,-

(a) in respect of goods, exceeding [1] [two hundred] rupees in value in any one transaction, sold by him or on his behalf, issue to the person to whom they are sold, a cash memorandum or bill serially numbered bearing the name and address of the dealer, the date of sale and the signature of such dealer or his servant, manager or agent and showing the particulars of goods so sold and price thereof [2] [and further showing the sales tax [3] [and the purchase tax] involved.]:

Provided that where any registered dealer sells goods to another registered dealer and claims deduction under sub-clause (ii) of clause (a) of sub-section (3) of section 6, he shall, in respect of such sale, prepare a cash memorandum or bill in quadruplicate and issue a copy thereof to the other registered dealer; and

(b) preserve a carbon copy of such cash memorandum or bill for a period or not less than five years from the date of issue thereof:

Provided that the Government may, by notification, exempt any class of registered dealers from the provisions of this sub-section.

(3) Where any dealer contravenes the provisions of sub-section (1) or sub-section (2), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after affording such dealer a reasonable opportunity of being heard, impose upon him a penalty which may extend to [4] [five thousand] rupees.

Footnotes:

Substituted for the words "twenty five", in sub-section (2) with effect from 31.5.2000 by Act No. 13 of 2000 vide notification No. LLRD(6) 10/2000 Legs -dated 25.5.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.2000 read with notification No.EXN-F(11)-3/99 dated 29.5.2000 published in R.H.P.(Extra-ordinary) on 29.5.2000.

Inserted by Himachal Pradesh Act No. 12 of 1979 with effect from. 1.4.1979, published in Rajpatra, Himachal Pradesh (Extra ordinary) on 16.6.79.

The words "the purchase tax and the surcharge" substituted by the words "and the purchase tax" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991.

Substituted for the words "five hundred" with effect from. 31.5.2000 by Act No. 13 of 2000 vide Notification No.LLR.D(6)-10/2000-Legs. dated 25.5.2000 published in R.H.P. (Extra-ordinary) on 25.5.2000 read with notification No.EXN-F(11)-3/99 dated 29.5.2000 published in R.H.P.(Extra-ordinary) on 29.5.2000

20. Production And Inspection Of Books, Documents And Accounts :-

(1) The Commissioner or any person appointed to assist him under sub-section (1) of section 3 not below the rank of an Assistant Excise and Taxation Officer may, for the purposes of this Act, require any dealer referred to in section 12 to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiries from such dealer relating to his business as may be necessary:

Provided that books, documents and accounts of a period more than five years prior to the year in which assessment is made shall not be so required.

(2) Every registered dealer shall-

(a) maintain day to day accounts of his business;

(b) maintain a list of his account books, display it alongwith his registration certificate and furnish a copy of such list to the Assessing Authority;

(c) produce, if so required, account books of his business before the Assessing Authority for authentication in the prescribed manner;

(d) retain his account books at the place of his business unless removed therefrom by an official for inspection, by any official agency, or by auditors, or for any other reasons which may be considered to be satisfactory by the Assessing Authority.

(3) If any officer referred to in sub-section (1) has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act, and that anything necessary for the purpose of an investigation into his liability may be found in any books, account, register or document, he may seize such book, account, register or document as may be necessary. The officer seizing the book, account, register or document shall forthwith grant a receipt for the same and shall,-

(a) in the case of book, account, register or document which was being used at the time of seizing, within a period of [1] [twenty-one] days from the date of seizure; and

(b) in any other case, within a period of [2] [ninety] days from the date of seizure;

return it to the dealer or the person from whose custody it was seized after examination or after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person gives a receipt in writing for the book, account, register or document returned to him. The officer

may, before returning the book, account, register or document, affix his signatures and his official seal at one or more places thereon, and in such case, the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signatures and seal of such officers have been affixed on cash book, account, register or documents [3] [:]

[4] [Provided that where the dealer fails to comply with the directions of the officer seizing the books or any other officer under the Act, such officer may further retain such books for such period as he may think fit after obtaining the permission of the Commissioner:

Provided further that such officer shall inform the dealer the reasons for which the books are required to be retained beyond the period prescribed under this sub-section.]

(4) For the purposes of sub-section (2) or sub-section(3), an officer referred to in sub-section(1) may enter and search any office, shop, godown, vessel, vehicle, or any other place of business of the dealer or any building, dwelling house, or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any books, accounts, register, documents or goods relating to his business:

Provided that no entry or search in the dwelling house shall be made-

- (i) after the sunset and before the sunrise;
- (ii) by an officer below the rank of an Excise and Taxation Officer; and
- (iii) without obtaining the sanction of the [5] [District Magistrate] within whose jurisdiction such house is situated.

(5) The powers conferred by sub-section (4) shall include the power to open and search any box or receptacle in which any books, accounts, register or other relevant documents of the dealer may be contained.

(6) Any officer empowered to act under sub-section (3) or sub-section(4) shall have power to seize any goods which are found in any office, shop, godown, vessel, vehicle or any other place of business or any building or place of the dealer but not accounted for by the dealer in his books, accounts, register, records and other documents.

Footnotes:

1. Substituted for the word "ten" with effect from. 28.5.1986 by Act No. 15 of 1986 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 28.5.1986.

2. Substituted for the word "sixty" with effect from. 28.5.1986 by Act No. 15 of 1986 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 28.5.1986.
 3. Substituted for the sign "." By Act No.15 of 1986 with effect from. 28-5-1986.
 4. Provisos inserted by Act No. 15 of 1986 with effect from. 28.5.1986.
 5. Substituted for the words "Deputy Commissioner" by Act No.2 of 1995, published in RHP(Extra-ordinary) on 4-2-1995.
- Himachal Pradesh General Sales Tax Act, 1968 (PART- 2) (Section 20A to Schedule C)

20A. Power Of Survey :-

(1) Notwithstanding anything contained in any other provision of this Act, any Assistant Excise and Taxation Commissioner or Excise and Taxation Officer appointed to assist the Commissioner under sub-section(1) of section 3 or an Excise and Taxation Inspector, duly authorized by the Commissioner may, for the purpose of survey regarding ascertainment of commencement of liability for registration under section 8 of this Act, enter-

- (a) any place within the limits of the area assigned to him, or
- (b) any place occupied by any dealer in respect of which he exercises jurisdiction, at which the dealer carrying on the business, keeps any of his books of accounts or other documents or any part of his cash relating to the sale or purchase of goods or stock of goods relating to his business and require any dealer, employee or any other person who may at that time and place be attending in any manner to, or helping in carrying on of such business-
- (i) to afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place,
- (ii) to afford him the necessary facility to check or verify the cash and stock of goods which may be found therein, and
- (iii) to furnish such information including such statement as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

(2) For the purpose of sub-section (1), no entry in the dwelling house shall be made-

- (i) after sunset or before the sunrise;
- (ii) by any officer below the rank of an Excise and Taxation Officer; and
- (iii) without obtaining the sanction of the District Magistrate within whose jurisdiction such house is situated.]

Footnotes:

1. New section 20-A inserted by Act No.2 of 1995, published in R.H.P.(Extra-ordinary) on 4-2-1995.

21. Assessee Permitted To Attend Through Authorized Agent :-

[1] [Any assessee, dealer or other person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, except when required to attend in person, may attend through a person authorised by him in writing

in this behalf, in the prescribed manner.]

Footnotes:

Sub-section (1) of section 21 substituted vide Act No. 21 of 2000, published in R.H.P. (Extra-ordinary) vide notification No.LLR.D(6) 18/2000 Legs. dated 21.9.2000. Provisions prior to 21.9.2000 were as under:-

"(1) Any assessee or dealer, who is entitled or required to attend before any authority in connection with any proceedings under this Act, except when required to attend in person, may attend through a person authorised by him in writing in this behalf, in the prescribed manner, being a relative or a regular and whole time employee of such assessee or dealer or an advocate or a sales tax practitioner."

Substituted for the words and sign "an income tax practitioner means" by H.P. Act No. 2 of 1995, published in R.H.P (Extra-ordinary) on 5.2.1995.

22. Establishment Of Check Posts Or Barriers And Inspection Of Goods In Transit :-

[1] (1) If, with a view to preventing or checking evasion of tax under this Act, the State Government considers it necessary so to do, it may, by notification direct the establishment of a check post or the erection of a barrier or both at such place or places as may be notified.

(2) The owner or person in-charge of a [2] [goods carriage] or vessel shall carry with him a [goods carriage] record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note containing such particulars as may be prescribed, in respect of such goods, meant for the purpose of trade as are being carried in the [goods carriage] or vessel, as the case may be, and produce the same before an officer in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Inspector checking the vehicle or vessel at any place.

(3) At every check post or barrier or at any other place when so required by any officer referred to in sub-section (2), the driver or any other person-in-charge of the [goods carriage] or vessel, shall stop the vehicle or vessel, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer-in-charge of the check post or barrier or the aforesaid officer to examine the contents in the vehicle or vessel by breaking open the package or packages, if necessary, and inspect all records

relating to the goods carried which are in the possession of such driver or other person-in-charge, who shall also furnish such other information as may be required by the aforesaid officer, and if considered necessary such officer may also search the [goods carriage] or vessel and the driver or other person-in-charge of the vehicle or vessel or of the goods.

(4) The owner or person-in-charge of a [goods carriage] or vessel entering the limits of State or leaving the State limits shall also give in triplicate a declaration containing such particulars as may be prescribed of the goods [3] [xx] carried in such vehicle or vessel, as the case may be, before the officer-in-charge of the check post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the said officer or before any other officer referred to in sub-section(2) at the time of checking under this section:

Provided that where a [goods carriage] or vessel bound for any place outside the State passes through the State, the owner or person-in-charge of such vehicle or vessel shall furnish, in duplicate, to the officer-in-charge of the check post or barrier of his entry into the State a declaration in the prescribed form and obtain from him a copy duly verified. The owner or person-in-charge of the [4] [goods carriage] or vessel, as the case may be, shall deliver within seventy two hours the said copy to the officer-in-charge of the check post or barrier at the point of its exit from the State, failing which he shall be liable to pay a penalty to be imposed by the officer-in-charge of the check post or barrier of the entry not exceeding [5] [twenty-five percentum of the value of the goods but which shall not be less than fifteen percentum of the value of the goods:]

Provided further that no penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard.

(5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, other than a rail head or a Post Office, when so required by the Commissioner, or any person appointed to assist him under sub-section (1) of section 3, the driver or the owner of [goods carriage] or the employee of a transport company or goods booking agency shall produce for examination transport receipt and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned or received for transport (maintained by him in the prescribed manner). The Commissioner or the person so appointed shall, for the purpose of examining that such transport receipts or

other documents or account books are in respect of the goods carried, transported, loaded, unloaded, or consigned or received for transport, have the powers to break open any package or packages of such goods.

(6) If the officer-in-charge of the check post or barrier or other officer as mentioned in sub-section (2) has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), as the case may be, or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing and after hearing the said person, order the unloading and detention of the goods, for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or other person in-charge of the [6] [goods carriage] or vessel on behalf of the owner of the goods, furnishing to his satisfaction a security or executing a bond with or without sureties for securing the amount of tax, in the prescribed form and manner, for an amount not exceeding [7] [twenty-five percentum of the value of the goods but which shall not be less than fifteen percentum of the value of the goods:]

Provided that where any goods are detained a report shall be made immediately and in any case within twenty four hours of the detention of the goods by the officer detaining the goods to the Excise & Taxation Officer of the District [8] [or the Assistant Excise & Taxation Officer-in-charge of the District or barrier] seeking the latter's permission for the detention of the goods for a period exceeding twenty-four hours, as and when so required and if no intimation to the contrary is received from the latter the former may assume that his proposal has been accepted.

(7) The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person-in-charge of the [9] [goods carriage] or vessel and shall require him to produce proper and genuine documents as referred to in sub-section (2) or sub-section (4), as the case may be, before him in his office on a specified date on which date the officer shall submit the proceeding along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer

finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding [twenty -five percentum of the value of goods but which shall not be less than fifteen percentum of the value of the goods], and in case he finds otherwise he shall order the release of the goods.

(8) If the owner of the goods or his representative or the driver or other person-in -charge of the [goods carriage] or vessel does not furnish security or does not execute the bond as required by sub-section (6) within ten days from the date of detaining the goods or [goods carriage] or vessel, the officer referred to in that sub-section may order further detention of the goods and in the event of the owner of the goods not paying the penalty imposed under sub-section (7) within twenty days from the date of the order imposing the penalty, the goods detained shall be made liable to be sold by the officer, who imposed the penalty, for the realisation of the penalty by public auction in the manner prescribed. If the goods detained are of a perishable nature or subject to speedy or natural decay or when the expenses of keeping them in custody are likely to exceed their value the officer -in-charge of the check post or barrier or any other officer referred to in sub-section (2), as the case may be, shall immediately sell such goods or otherwise dispose them of. The sale proceeds shall be deposited in the Government treasury and the owner of the goods shall be entitled to only the balance amount of sale proceeds after deducting the expenses and other incidental charges incurred in detaining and disposing of the goods.

(9) The officer detaining the goods shall issue to the owner of the goods or his representative or the driver or the person-in-charge of the [10] [goods carriage] or vessel receipt specifying the description and quantity of the goods so detained and obtain an acknowledgement from such person or if such person refuses to give and acknowledgment, record the fact of refusal in the presence of the two witnesses.

(10) If order of detention of goods under sub-section (6) or of imposition of penalty under sub-section (7) or sub-section (8) is in the meantime set aside or modified in appeal or other proceedings, the Officer detaining the goods and imposing the penalty, as the case may be, shall also pass consequential orders for giving effect to the orders in such appeal or other proceedings as the case may be.

(11) No dealer or any person, including a carrier of goods or agent

of a transport company or booking agency acting on behalf of a dealer, shall take delivery of, or transport, from any vessel, station, airport or any other place, whether of similar nature or otherwise, any consignment of goods other than personal luggage or goods for personal consumption, the sale or purchase of which is taxable under this Act, except in accordance with such conditions as may be prescribed with a view to ensuring that there is no evasion of the tax imposed by or under this Act:

Provided that no place which is rail-head or post-office shall be so notified by the State Government.

[11] [Explanation I. -In this section the expression goods carriage; has the same meaning as is assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988, but does not include road transport plying in collaboration with rail transport.]

Explanation II - For purposes of sub-section (7), service of notice on the representative of the owner or the driver or other person-in-charge of the [12] [goods carriage] or vessel shall be deemed to be a valid service on the owner of the goods.

Footnotes:

Section 22 substituted by Act No.;10 of 1976 with effect from. 24-1-1976 published in Himachal Pradesh Rajpatra (Extra-ordinary) on 23-4-1976. The provisions prior to 24-1-1976 which are not applicable thereafter were as follows:-

"22. (1) If, with a view to preventing or checking evasion of tax under this Act in any place or places in the Union Territory of Himachal Pradesh, the Government considers it necessary so to do, it may, by notification, direct the establishment of a check post or the erection of a barrier or both, at such place or places as may be notified.

(2) The owner or person in-charge of a goods vehicle or vessel shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or vessel, as the case may be, and produce the same before an officer in-charge of a check post or barrier or any other officer of the department not below the rank of an Assistant Excise and Taxation Officer checking the vehicle or vessel at any other place.

(3) The owner or person in-charge of a goods vehicle or vessel entering the limits of Himachal Pradesh or leaving such limits shall also give in triplicate a declaration containing such particulars as may be prescribed of the goods carried in such vehicle or vessel, as

the case may be, before the officer in-charge of the check post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the officer in-charge of the check post or barrier before any other officer as mentioned in sub-section(2):

Provided that where a goods vehicle or vessel bound for any place outside the Union territory of Himachal Pradesh passes through that Union territory, the owner or any person in-charge of such vehicle or vessel shall also obtain a transit slip (rahdari) in the prescribed form from the officer in-charge of the check post or barrier of his entry into the said Union territory and deliver it to the officer in-charge of the check post or barrier at the point of his exit from the said Union territory failing which it shall be presumed that the goods have been sold within the said Union territory.

(4) At every check post or barrier or at any other place when so required by any other officer referred to in sub-section (2) in this behalf, the driver or any other person in-charge of the goods vehicle or vessel shall stop the vehicle or vessel, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer in-charge of the check post or barrier or the officer as aforesaid to examine the contents in the vehicle or vessel by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried which are in the possession of such driver or other person in-charge, who shall also furnish such other information as may be required.

(5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, other than a rail head or a post office, when so required by the Commissioner or any person appointed to assist the Commissioner under sub-section (1) of section 3, the driver or the owner of the goods carrier or the employee of a transport company shall produce for examination transport receipts and all other documents and account books concerning the goods carried, transported, loaded, unloaded or consigned or received for transport, and the Commissioner or the person so appointed shall have for the purpose of examining such transport receipts and other documents and account books in respect of the goods carried, transported, loaded, unloaded or consigned or received for transport, the power to break open any package or packages of such goods.

(6) Any officer not below the rank of an Assistant Excise and Taxation Officer while acting under this section shall have the power to seize any goods not covered by the documents mentioned

in sub-section (2), sub-section (3) and sub-section (5).

(7) No dealer or any person, including a carrier of goods, acting on behalf of a dealer, shall take delivery of, or transport from, any vessel, station, airport or any other place, whether of similar nature or otherwise, notified in this behalf by the Government, any consignment of goods, the sale or purchase of which is taxable under this Act except in accordance with such conditions as may be prescribed with a view to ensuring that there is no evasion of the tax imposed by or under this Act:

Provided that no place which is a rail head or a post office shall be so notified by the Government.

(8) Where the declaration made under sub-section (3) is false in respect of any particulars furnished therein, the officer-in-charge of the check post or barrier or any other officer not below the rank of an Assistant Excise and Taxation Officer shall have the power to seize the goods in respect of which the declaration is false:

Provided that the officer acting under sub-section (6) or sub-section (8) may, before or after such seizure, give to the person affected an option to pay, in lieu of seizure and in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater.

Explanation -In this section, the expression "goods vehicle" has the same meaning as is assigned to it in clause (8) of section 2 of the Motor Vehicles Act, 1939, (4 of 1939) but does not include road transport plying in collaboration with rail transport."

Substituted for the words "goods vehicle" by Act No.5 of 1991 published in RHP (Extra-ordinary) vide notification No.LLRD(6)4/91-Legislation dated 20-4-1991, with effect from. 1-4-1991..

The words "taxable which was added with effect from. 31.5.2000 by Act No. 13 of 2000 published in RHP (Extra-ordinary) on 25.5.2000, omitted with effect from. 17.2.2000 vide Act No. 1 of 2000, published in RHP (Extra-ordinary) on 17.2.2001 vide notification No. LLR.D(6)-23/2000 dated 17.2.2001.

Substituted for the words "goods vehicle" by Act No.5 of 1991 published in RHP (Extra-ordinary) vide notification No.LLRD(6)4/91-Legislation dated 20-4-1991, with effect from. 1-4-1991.

Substituted for the words "two thousand rupees or twenty percent of the value of the goods whichever is greater" by Act No. 5 of 1991, published in R.H.P. (Extra-ordinary) on 20.4.1991 with effect from. 1.4.1991.

Substituted for the words "goods vehicle" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) vide

notification No.LLR D (6) 4/91-Legislation dated 20.4.1991, with effect from. 1.4.1991.

Substituted for the words "one thousand rupees or twenty percentum of the value of the goods, whichever is greater" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991 with effect from. 1.4.1991.

Inserted by Himachal Pradesh Act No. 32 of 1978, published in Rajpatra, Himachal Pradesh (Extra ordinary) on 13.10.1978 with effect from. 13.10.1978.

Substituted for the words "goods vehicle" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) vide notification No.LLR D (6) 4/91-Legislation dated 20.4.1991.

Substituted for the words "goods vehicle" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) vide notification No.LLR D (6) 4/91-Legs. dated 20.4.1991 with effect from. 1.4.1991.

Substituted by Act No. 5 of 1991 with effect from. 1.4.1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) vide notification No.LLR D (6) 4/91-Legs. dated 20.4.1991. Previous provisions prior to 1.4.1991 were as under:- "Explanation 1. In this section the expression "goods vehicle" has the same meaning as is assigned to it in clause (6) of section 2 of the Motor Vehicles Act, 1939, but does not include road transport plying in collaboration with rail transport."

Substituted for the words "goods vehicle" by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) vide notification No.LLR D (6) 4/91-Legs. dated 20.4.1991 with effect from. 1.4.1991.

22A. Registration And Submission Of Returns By Carrier Of Goods, Agent Of The Transport Company And Booking Agency :-

[1] (1) For carrying out the purpose of section 22, every carrier of goods agent of transport company and booking agency having a place of business in the State of Himachal Pradesh and transporting or clearing or forwarding goods on behalf of a dealer, shall be required to obtain a certificate of registration, in the prescribed manner, from the Assessing Authority of the area in which it has a place of business, on payment of such fee as may be prescribed and on furnishing of security to the satisfaction of the said authority in the manner as may be prescribed.

(2) Every agency, referred to in sub-section (1), shall submit to the Assessing Authority such returns of the goods transported, cleared or forwarded by it, by such dates and in such manner as may be prescribed.

(3) The Assessing Authority shall have the powers to call for and examine the books of accounts, documents and other record in possession of such agency with a

view to verifying the correctness or returns submitted and the compliance to the requirements of provisions of section 22.]

Footnotes:

1. Section 22-A inserted by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991 with effect from. 1.4.1991 vide notification No. LLR D(6) 4/91-Legis. dated 20.4.1991.

23. Power To Call For Information From Banking Companies Etc :-

The Commissioner or any other person appointed to assist him under sub section (1) of section 3 may, for carrying out the purposes of this Act, require any person including a banking company, post office or any officer thereof to furnish any information or statement useful for, or relevant to, any proceedings under this Act.

24. Delegation Of Powers :-

Subject to such restrictions and condition as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers under this Act, except those under sub section (1) of section 31 to any person appointed under section 3 to assist him.

25. Omitted :-

[1] [xx]

Footnotes:

1. Section 25 omitted by Act No. 21 of 2000 vide notification No. LLR D(6) 18/2000-Legislation-dated 21.9.2000 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 21.9.2000. The provisions prior to 21.9.2000 were as under:-

"25. Information to be furnished regarding change of business -If any dealer to whom the provisions of sub-section (3) of section 12 apply,-

(a) sells or otherwise disposes of his business or any place of business, or

(b) discontinues or transfers his business or changes his place of business or opens a new place of business, or

(c) changes the name (constitution) or nature of his business, or

(d) wants to make any change in the class or classes of goods specified in his certificate of registration for use in the manufacture of any goods for sale,

he shall, within the prescribed time inform the prescribed authority accordingly; and if any such dealer dies, his legal representative

shall, in like manner, inform the said authority."

26. Transfer Of Business :-

Where the ownership of the business of a registered dealer is entirely transferred and the transferee carries on such business either in its old name or in some other name, the transferee shall, for all the purpose of this Act (except for liabilities under this Act already discharged by such dealer), be deemed to be and to have always been registered as if the certification of registration of such dealer had initially been granted to the transferee; and the transferee shall on application to the prescribed authority be entitled to have the registration certificate amended accordingly.

27. Liability To Tax On Stock In Certain Cases :-

Should his certificate of registration be cancelled under any provision of this Act, a dealer, save when he has transferred his business to some one else, and notwithstanding clause (h) of section 2 but subject to the provisions of section 7, shall be liable to pay tax on goods purchased by him in the [1] [State of Himachal Pradesh] after registration, and remaining unsold at the time of cancellation of certificate at a rate leviable for the sale of such goods.

Footnotes:

1. Substituted for the words "Union Territory of Himachal Pradesh" by A.O.1973.

28. Liability To Tax Of A Partitioned Hindu Family, Dissolved Firm Etc :-

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

(a) the tax payable under this Act 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 such partition, dissolution or disruption had taken place and all the provisions of this Act shall apply accordingly; and

(b) every person who was, at the time of such partition, dissolution or disruption, a member or partner of an undivided Hindu family, firm or association of persons shall, notwithstanding such partition, dissolution or disruption, be liable severally and jointly for the

payment of the tax including interest and penalty, if any, payable under this Act by such family, firm or association of persons, whether assessment is made prior to or after such partition, dissolution or disruption.

(2) Where the registration certificate of a dealer is cancelled under this Act in any case, other than that of a partition of undivided Hindu family or dissolution or disruption of a firm or association of persons, the tax payable under this Act by such dealer for the period upto the date of cancellation of the registration certificate may be assessed on such dealer as if no such cancellation had taken place and all the provisions of this Act shall apply accordingly.

28A. Liability Of Legal Heirs To Pay Tax :-

Where a dealer liable to pay tax under this Act, dies, then-

(a) if the business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax (including any penalty) due from the dealer under this Act, whether such tax (including any penalty) has been assessed before his death but has remained un-paid, or is assessed after his death;

(b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased to the extent the estate is capable of meeting the charge, the tax (including any penalty) due from the dealer under this Act, whether such tax (including any penalty) has been assessed before his death, or is assessed after his death;

and the provisions of this Act shall, so far as may be, apply to such legal representative, or other person as if he were the dealer himself.]

Footnotes:

1. Section 28-A added by Himachal Pradesh Act No. 7 of 1977 and shall be deemed to have been added. This Act was published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.5.1977.

29. Bar Of Certain Proceedings :-

No assessment made and no order passed, under this Act, or the rules made there under, by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any civil court, and save as is provided in sub-section (5) of section 21 and sections 30, 31 and 33, no appeal or application for revision shall lie against any such assessment or order.

30. Appeals :-

(1) An appeal from every original order passed under this Act or rules made thereunder shall lie-

(a) if the order is made by an assessing authority or by an officer - in -charge of the check post or barrier or any other officer not

below the rank of the Excise & Taxation Officer, to the Deputy Excise & Taxation Commissioner;

(b) if the order is made by the Deputy Excise & Taxation Commissioner, to the Commissioner;

(c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner to the [2] [Tribunal].

(2) An order passed in appeal by a Deputy Excise & Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner are conferred, shall be further appealable to the [Tribunal].

(3) Every order of the [Tribunal] and subject only to such order, the order of Commissioner or any officer exercising the powers of the Commissioner or the order of the Deputy Excise & Taxation Commissioner or of the assessing authority, if it was not challenged in appeal or revision, shall be final.

(4) No appeal shall be entertained unless it is filed within sixty days from the date of communication of the order appealed against, or such longer period as the appellate authority may allow, for reasons to be recorded in writing.

(5) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the [3] [tax (including interest payable)] or of the penalty, if any, imposed or both as the case may be:

Provided that if such authority is satisfied that the dealer is unable to pay the [tax (including interest payable)] assessed or the penalty, if any, imposed or both, he may, for reasons to be recorded in writing, entertain an appeal without the [4] [tax (including interest payable)] or penalty or both having been paid in full or after part payment of such [tax (including interest payable)] or penalty or both.

(6) Subject to such rules of procedure as may be prescribed, an appellate authority may pass such order on appeal as it deems just and proper.]

Footnotes:

Section 30 substituted by Act No. 15 of 1978 with effect from. 25.5.1987 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.1987 which are not applicable thereafter were as follows:-

"30. Appeal - (1) Any dealer aggrieved by any notice issued under sub-section (7) of section 14 or by any order passed by the Assessing Authority *[or by an officer-in-charge of the check post or barrier] under this Act, may, in the prescribed manner, appeal to the prescribed authority within sixty days from the date of

receiving such notice or order:

Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed and the penalty, if any, imposed on the dealer has been paid:

Provided further that if such authority is satisfied that the dealer is unable to pay the tax assessed or the penalty, if any, imposed or both, he may for reasons to be recorded in writing, entertain an appeal without the tax or penalty or both having been paid.

(2) Subject to such rules of procedure as may be prescribed, the said authority may pass such orders in relation thereto as he may think fit."

*[inserted by H.P. Ordinance No.3 of 1975 section 3 (replaced by H.P. Act No. 10 of 1976).

In sub-sections (1), (2) and (3) for the word "Financial Commissioner" the word "Tribunal" substituted vide notification No. LLRD (6) 5/99-Legs - dated 23.4.1999 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 23.4.99.

Substituted for the word "tax" by Act No. 18 of 1991 with effect from. 2.11.1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.11.1991 vide notification No. LLRD (6) 23/91-Legs-dated 2.11.1991

Substituted for the word "tax" by Act No. 18 of 1991 with effect from. 2.11.1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.11.1991 vide notification No. LLRD (6) 23/91-Legs-dated 2.11.1991

31. Revision :-

(1) The Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any officer powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such area as may be specified in the notification [2] [and such officer shall be deemed to be the Commissioner for the purposes of sub-section (1).]

(3) The [3] [Tribunal], on application made to him against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order, may call for and examine

the record of any such case and pass such orders thereon as he thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.]

Footnotes:

1. Section 31 substituted by Act No. 15 of 1987 with effect from 25.5.1987 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 25.5.1987 The provisions prior to 25.5.1987 were as follows:-

31. Revision - (1) The Commissioner may, of his own motion or on application made to him, call for the record of any proceeding which are pending before, or have been disposed of by, any assessing or appellate authority *[or by an officer-in-charge of the check post or barrier] appointed under this Act, for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may think fit:

Provided that the application shall be made within a period of 180 days of the date of taking of the proceedings or of passing of the order, as the case may be.

(2) The Government may, by notification, confer upon any officer the powers of the Commissioner under sub-section (1). The officer on whom the powers of the Commissioner under sub-section (1) have been conferred by the Government shall exercise those powers subject to such conditions, and in respect of such areas, as may be specified in the notification.

(3) The Commissioner may, after giving notice to the parties concerned, review his own order.

(4) The Financial Commissioner may at any time call for the record of any case decided under the preceding sub-section and if, in his opinion, the final order contains an erroneous decision of an important question of law, he may pass such order on the case as he may think fit.

(5) The Commissioner or the officer on whom powers of the Commissioner under sub-section (1) have been conferred by the Government or the Financial Commissioner before deciding an application under sub-section (1) or sub-section (4), as the case may be, may direct the applicant to deposit, in whole or in part, the amount of tax assessed and the penalty, if any, imposed on him under this Act.

(6) No order shall be made under this section which adversely affects the rights of an assessee or other person upon whom an

obligation is imposed by or under this Act, without giving such assessee or other person a reasonable opportunity of being heard;

*Inserted with effect from. 24-1-1976 by Ordinance No. 3 of 1975 replaced by Himachal Pradesh Act No10 of 1976 published in Extra-ordinary Gazette on 23-4-1976.

2. Inserted by H.P.Act No. 2 of 1995 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 4.2.1995

3. Substituted for the words "Financial Commissioner" by Act No.8 of 1999, vide notification No. LLRD (6) 5/99-Legs - dated 23.4.1999 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 23.4.99.

31A. Disposal Of Pending Appeal And Application Etc :-

[1] Notwithstanding anything contained in sections 7,8 and 9 of this Act, any appeal or application, under sections 30, 31, 33 and 35 of the principal Act, pending immediately before the commencement of the Himachal Pradesh General Sale Tax (Amendment) Act, 1987, shall be disposed of in accordance with the provisions of the principal Act as if the provisions of section 7, 8 and 9 of this Act had not been enacted.]

Footnotes:

1. Section 31-A added by the H.P. Act No.15 of 1987 published in R.H.P. (Extra-ordinary) on 25.5.1987, with effect from. 25.5.1987.

32. Rectification Of Mistakes :-

[1] (1) The Commissioner or the officer on whom powers of the Commissioner for the purposes of sub-section (1) of section 31 have been conferred by the State Government may at any time within one year from the date of any order passed by him on an application made to him or of his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order:

Provided that the Commissioner may entertain an application under this sub-section after the expiry of the said period of one year, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund, unless the Commissioner has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of enhancing or reducing the amount of tax or penalty, the Commissioner shall, in

the prescribed manner, order the recovery of the amount due from or as the case may be ordered the refund of the amount due to, such person.]

Footnotes:

1 . Substituted by Act No.2 of 1995, published in R.H.P. (Extra-ordinary) on 4.2.1995. The provisions prior to 4.2.1995 were as under:-

"32. Review - (1) Any person considering himself aggrieved by an order of any officer under this Act, and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when such order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for a review of such order to the officer who made the order.

(2) The officer may, after giving notice to the parties concerned, review any order made by him on the grounds mentioned in sub-section (1)".

33. Statement Of Case To High Court :-

(1) Within 60 days from the passing of an order under section [1] [30 or 31] by the [2] [Tribunal], affecting any liability of any dealer to pay tax under this Act, such dealer or the Commissioner may, by application in writing accompanied by a fee of one hundred rupees in case the application is made by dealer, require the [Tribunal] to refer to the High Court any question of law arising out of such order.

(2) If, for reasons to be recorded in writing, the [Tribunal] refuses to make such reference, the applicant may, within 30 days of such refusal, either-

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

(b) apply to the High Court against such refusal.

(3) if upon the receipt of an application under clause (b) of sub-section (2), the High Court is not satisfied of the correctness of the [3] [Tribunals] decision, it may require the [Tribunal] to state the case and refer it, and on the receipt of such requisition, the [Tribunal] shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine

the question raised thereby, it may refer the case back to the [Tribunal] to make such additions thereto or alterations therein as the court may direct in that behalf.

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

(6) Where a reference is made to the High Court under this section, the cost (including the disposal of the fee) shall be in the discretion of the Court.

(7) The payment of the amount, if any, of the tax due in accordance with the order of the [Tribunal], in respect of which an application has been made under sub-section (1), shall not be stayed pending the disposal of such application or any reference made in consequence thereof but if such amount is reduced as the result of such reference, the excess tax paid shall be refunded in accordance with the provisions of section 18.

Footnotes:

Substituted for the figure "31" by Act No. 15 of 1987 with effect from. 25.5.1987 published in R.H.P. (Extra-ordinary) on 25.5.1987.

Substituted for the word "Financial Commissioner" by Act No. 8 of 1999 vide Notification No LLR.D. (6)5/99-Leg. dated 23.4.1999 published in R.H.P. (Extra-ordinary) on 23.4.1999.

Substituted for the word "Financial Commissioner" by Act No. 8 of 1999 vide Notification No LLR.D.(6)5/99-Leg. dated 23.4.1999 published in R.H.P. (Extra-ordinary) on 23.4.1999.

34. Power Of Commissioner And His Assistants To Take Evidence On Oath, Etc :-

The Commissioner or any person appointed to assist him under sub-section (1) of section 3 shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:-

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

(b) compelling the production of documents and impounding or detaining them;

(a) issuing commissions for the examination of witnesses;

(b) requiring or accepting proof of facts by affidavits;
(c) such other powers as may be prescribed;
and any proceeding under this Act before the Commissioner or any person appointed to assist him under sub-section (1) of section 3 shall be deemed to be a "judicial proceeding" within the meaning of section 193 and 228 and for the purposes of section 199 of the Indian Penal Code.

35. Offences And Penalties :-

[1] (1) Any person who

(a) willfully acts in contravention of the provisions of this Act or the rules made thereunder; or

(b) furnishes a certificate under sub-section (2) of section 6, which he knows or has reason to believe it to be false; or

(c) being a registered dealer falsely represents when purchasing any class of goods for use by him in the manufacture of any goods for sale, that goods of such class are covered by his certificate of registration; or

(d) not being a registered dealer, falsely represents when purchasing goods in Himachal Pradesh that he is a registered dealer; or

(e) after purchasing any goods for any of the purposes specified in the Act, fails, without reasonable excuse, to make use of the goods for any such purpose; or

(f) has in his possession any form issued under the Act on payment by the Government, which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder; or

(g) prevents inspection or examination of books, documents and accounts or wilfully fails to produce such books, documents and accounts mentioned in section 20; or

(h) fails to carry with him any of the records or documents specified in section 22; or

(i) makes any statement or declaration in any of the documents specified in section 22 or section 22-A, as the case may be, which statement or declaration he knows or, has reasons to believe to be false; or

(j) in any way is knowingly concerned in any fraudulent evasion or attempt at evasion or abetment of evasion of any tax payable in respect of the sale or purchase of any goods under this Act; or

(k) if he is a driver or any other person-in-charge of goods vehicle

or vessel or an owner of the goods, refuses on demand by the officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Inspector, to give his name and address or the name and address of the owner of the goods vehicle or of the consignor or consignee of the goods or gives any name and address of any of these persons which he knows or has reason to believe to be false; or

(l) aids or abets any person in the commission of any offence specified in this sub-section;

he shall, without prejudice to the recovery of any tax or interest or penalty which may be due from him, be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence, is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

(2) Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder, or any order or direction made or given thereunder, shall, if no other penalty is provided either under sub-section (1) of this section or under any other provisions of this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees, and where such contravention or failure is continuing one, to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

(2) Any officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Officer, appointed under sub-section (1) of section 3 or such other officer as the State Government may, by notification, appoint, may, after affording to the person concerned a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (2):

Provided that the officer-in-charge of the check post or a barrier shall exercise such powers only at such check posts or barriers.]

Footnotes:

1. Section 35 substituted by Act No. 18 of 1991 published in R.H.P. (Extra-ordinary) dated 2.11.1991 vide notification No.LLRD(6)-23/91-Legislation dated 2.11.1991. The previous provisions prior to 2.11.1991 were as follows:-

"35. Penalty -(1) Whosoever contravenes, or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given thereunder, shall if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand

rupees, and where such contravention or failure is a continuing one, to a daily penalty not exceeding fifty rupees during the period of continuance of the contravention or failure.

*[(2) Any officer-in-charge of the check-post or barrier or any other officer not below the rank of an Assistant Excise and Taxation Officer appointed under sub-section (1) of section 3 or such other officer as the State Government may, by notification, appoint, may after affording to the person concerned a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (1):]

Provided that the Officer-in-charge of the check-post or a barrier shall exercise such powers only at such check posts or barriers.

**[(3) Any person aggrieved by an order passed by an officer under sub-section (2), may, within a period of sixty days from the date of such order, appeal to the Commissioner.

(4) Subject to such rules of procedure as may be prescribed, the Commissioner may pass such orders in relation to such appeal as he may think fit.

(5) An order passed in appeal under sub-section (4) may at any time be revised by the Financial Commissioner in the same manner and to the same extent as is provided in sub-sections (3) and (4) of section 31"]

*Sub-section (2) substituted for "An officer of the rank of a Deputy Excise and Taxation Commissioner appointed under sub-section (1) of section 3 may, after affording to the dealer a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (1)." By Act No. 32 of 1978 published in R.H.P. (Extra), dated the 13th October, 1978 with effect from. 13.10.1978.

**Sub-sections (3), (4) and (5) omitted by Act No. 15 of 1987 with effect from. 25.5.1987 published in Rajpatra H.P. (Extra-ordinary) on 25.5.1987.

35A. Imposition Of Penalty In Lieu Of Prosecution :-

[1] If any person specified in sub-section (1) of section 35 is guilty of an offence under that sub-section, any officer-in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Officer appointed under sub-section (1) of section 3, or such other officer as the State Government may, by notification, appoint, within his jurisdiction, may, after affording to the person concerned a reasonable opportunity of being heard, by order, in writing, impose upon him by way of penalty,-

(a) in case of sale to him of the goods, if the sale had been a sale falling within this Act, a sum not exceeding one and a half times of the tax which would have been levied under this Act; or

(b) in case of non-taxable goods, a sum as may be calculated at the rate of ten paise in a rupee as if such goods were liable to tax; or

(c) in cases which do not fall either under clause (a) or clause(b), a sum not

exceeding three thousand rupees for each offence:

Provided that the penalty for offences under sub-section (7) of section 12 shall be imposed under the same sub-section:

Provided further that no prosecution for an offence under sub-section (1) of section 35 shall be instituted in respect of the same facts on which a penalty has been imposed under this section or sub-section (7) of section 12.]

Footnotes:

1. Section 35-A inserted with effect from. 2.11.1991 by Act No. 18 of 1991, published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.11.1991 and subsequently this section was substituted by Act No. 12 of 1992 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 12.5.1992 which came into force with effect from. 1.8.92 vide notification No. EXN-F(11)-1/92 dated 28.7.1992 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 31.7.1992. The previous provisions prior to 1.8.1992 were as follows:-

"35-A. Imposition of penalty in lieu of prosecution - If any person specified in sub-section (1) of section 35 is guilty of any offence under that sub-section, any officer-in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Officer appointed under sub-section (1) of section 3, or such other officer as the State Government may, by notification, appoint, within his jurisdiction, may, after affording to the person concerned a reasonable opportunity of being heard, by order, in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods, if the sale had been a sale falling within this Act: Provided that the penalty in case of non-taxable goods shall be calculated as if such goods were liable to tax at the rate of ten paise in a rupee:

Provided further that the penalty for offences under sub-section (7) of section 12 shall be imposed under the same sub-section:

Provided further that no prosecution for an offence under sub-section (1) of section 35 shall be instituted in respect of the same facts on which a penalty has been imposed under this section or sub-section (7) of section 12."

35B. Cognisance Of Offences :-

[1] (1) No Court shall take cognisance of any offence punishable under this Act or the rules made thereunder except with previous sanction of the Government or of such officer as may be authorised by a notification published in Official Gazette and no Court inferior to that of a Magistrate of the first class shall try any such offence.

(2) All offences punishable under sub-section (1) of section 35 of this Act shall be cognisable and bailable].

Footnotes:

1. Section 35-B inserted by Act No. 18 of 1991, published in Rajpatra, Himachal Pradesh (Extra ordinary) vide notification No. LLR D (6)-23/91-Legs. dated 2.11.1991 with effect from. 2.11.1991.

36. Directors Of Defaulting Companies To Be Liable To Pay Tax, Etc :-

Where any tax assessed or penalty imposed under this Act on a company cannot be recovered by reason of the company having gone into liquidation or for any other reason, then every person, who was Director of such company at any time during the relevant period for which the tax is due or in respect of which the default for which the penalty is imposed was committed, shall be jointly and severally liable for the payment of such tax and penalty unless he

proves that the non-payment or non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company

37. Disposal Of Certain Property :-

Any property seized under this Act, which is not claimed by any person, shall be disposed of in accordance with the provisions of sections 25,26 and 27 of the Police Act, 1861, as if the officer or authority seizing such property were a police officer:

Provided that if, during the period allowed in accordance with such provisions, any person claims the property, it shall not be released to him unless the tax or penalty or both due in respect of the same under this Act is paid by such person.

38. Indemnity :-

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

39. Returns, Etc. To Be Confidential :-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act other than proceedings before a criminal court, shall, save as provided in sub-section (3), be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any officer, of the Himachal Pradesh Government to produce before it any such statement, return, accounts, 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 officer of the Himachal Pradesh Government discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

[[1] (3) Nothing contained in this section shall apply to the disclosure-

(a) of any such particulars in respect of any such statement, return,

accounts, document, evidence, affidavit or deposition for the purpose of any prosecution under this Act or the Indian Penal Code, 1860; or

(b) of any such particulars to any person entrusted with the administration of this Act for the purposes of carrying out the objects of this Act; or

(c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or summons or the recovery of any demand; or

(d) of any such particulars to a civil court in any suit to which the Government in the Excise and Taxation Department or any officer of the said Department is a party and which relates to any matter arising out of any proceeding under this Act; or

(e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or

(f) of any such particulars where such particulars are relevant to any enquiry into the conduct of an official of the Excise and Taxation Department of the State Government to any person or persons appointed by the Commissioner under the Public Servants (Inquiries) Act, 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 the annual gross turnover, shown in any return furnished or determined in any assessment order passed under this Act, to any officer of the Central or any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

(h) of any such particulars which are relevant to any inquiry into the charge of misconduct, against an income- tax practitioner or other person who represents any assessee before any authority in any proceeding under this Act; or

(i) of any such particulars to the Director of Economics and Statistics Department of the Government of Himachal Pradesh as may be necessary for enabling him to work out the incidence of tax on any commodity or for carrying out any statistical survey of trade, commodity or dealer; and

(j) of any such particular for the purpose of preparing data by computerization:

Provided that the information mentioned in clauses (a), (f) and (g) may be permitted to be disclosed by the Assistant Excise & Taxation Commissioner or the Excise & Taxation Officer, Incharge

of the district only when he is satisfied, after scrutiny of the request made in this behalf and after such enquiries as he considers necessary, that the disclosure is admissible under this sub-section.]

Footnotes:

1. Sub-section (3) substituted by Act No.14 of 1994 published in R.H.P. (Extra-ordinary) on 21.10.1994. The provisions prior to 21.10.1994 were as under:-

"(3) Nothing contained in this section shall apply to the disclosure of any such particulars in respect of any such statement, return, accounts, document, evidence, affidavit or deposition for the purpose of any investigation or prosecution under this Act of the Indian Penal Code, 1860, or made under any other enactment for the time being in force."

40. Power To Make Rules :-

(1) The Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe: -

(a) [1] [xx xx] the limit of capital investment for the purposes of clause (p) of section 2:

Provided that the State Government may, for the purposes of this clause, make rules with retrospective effect but not earlier than the 2nd day of November, 1991;

[2] [(aa)] the constitution of the Tribunal, qualifications and age for appointment, terms of office, salaries, allowances and other conditions of service of the Presiding Officer or Member of the Tribunal;"

[3] [(aaa) the further period after the date of expiry of three consecutive years referred to in sub-section (3) of section 4;]

(b) the taxable quantum for particulars classes of dealers under clause (d) of sub-section (6) of section 4;

(c) the particulars to be contained in a declaration under sub-clause (ii) of clause (a) of sub-section (3) of section 6; the form of such declaration and the manner in which such declaration is to be furnished;

[4] [(cc) the from of declaration and the manner in which such declaration is to be furnished under sub clause(iii) of clause (a) of sub-section (3)of section 6;]

(d) the other sales, turnover in respect of which may be deducted from a dealers gross turnover in computing his taxable turnover as

defined in section 6;

[5] [(dd) the manner in which the certificate referred to in the second proviso to sub-section (1) of section 8 shall be furnished;]

(e) the authority to which application for registration for registration under section 8 or section 9 shall be made;

(f) [6] [the fixation of fees to be charged and] and the procedure for the payment of fees in respect of, and other matters incidental to, the registration of dealers and granting of certificates of registration, and the form of such certificate under section 8 or section 9 or section 10 and the manner in which security shall be furnished under section 11;

(g) the intervals at which the conditions subject to which a lump-sum by way of composition may be accepted by the Commissioner from any dealer, the manner in which such lump-sum is to be determined and the manner in which the tax under this Act shall be payable under section 12;

(h) the returns to be furnished under sub-section (3) of section 12, and dates by which, and the authority to which such returns shall be furnished;

[7] [(hh) the manner in which deductions are to be made and the deductions certificate is to be issued under sub-section (1) and (4) of section 12-A;]

(i) the time within which and the manner in which tax collected under section 13 shall be paid;

(j) the date by which returns for any period are to be furnished and the procedure to be followed for assessment under section 14;

[8] [(jj) xx xx xx xx]

[9] [(jjj) the manner of payment of tax, penalty or interest, under sub-section (7) of section 14;]

(k) the manner in which refunds under section 18 shall be made;

(l) the conditions, if any, for issue of direction under section 19;

(m) the manner of authentication of account books under clause (c) of sub-section (2) of section 20;

(n) the particulars of bills of sales or delivery notes referred to in sub-section (2) of section 22, the particulars of declaration to be given under sub-section (3) of that section, the form of transit slip (rahdari) referred to in the proviso to that sub-section and the conditions on which delivery of consignment of goods shall be taken under sub-section (7) of that section;

[10] [(nn) the manner of obtaining and granting the registration certificate, fee to be charged for the same and the manner in which the security is to be furnished under sub-section (1) and also the

dates and the manner of furnishing returns under sub-section (2) of section 22-A;]

(o) the restrictions and conditions subject to which the Commissioner may delegate his powers under section 24;

(p) the authority to which information shall be furnished under section 25;

(q) the manner in which appeals against assessment may be preferred under section 30;

(r) the procedure for, and other matters (including fees) incidental to, the disposal of appeals and applications for revision and review under sections 30, 31 and 32;

[11] [(rr) the form and the manner in which the certificate under section 42-B is to be furnished;

(rrr) the restrictions and conditions subject to which and the manner in which the set off under sub-section(2) of section 42-C is to be granted;]

(s) the authority by which and the manner in which cases may be transferred from one Assessing Authority to another and from one appellate authority to another;

(t) any other matter which is to be, or may be, prescribed;

(u) the manner in which, and the time within which, applications shall be made, information furnished and notices served, under this Act;

(v) the procedure for the cancellation and return of certificate of registration;

[12] [(w) to prescribe the meaning of the industries specified in Explanation to sub-section(1) of section 42.]

Footnotes:

1. In clause (a) the words "to prescribe" omitted by Act No.8 of 1999 vide Notification No.LLR.D(6) 5/99 -Leg.dated 23.4.1999 published in R.H.P. (Extra-ordinary) on 23.4.1999.

2.The existing clause (aa) renumbered as clause (aaa) by Act No. 8 of 1999 and before clause (aaa) so renumbered, new clause (aa) inserted by Act No. 8 of 1999

3. The existing clause (aa) renumbered at clause (aaa) by Act No. 8 of 1999 vide notification, ibid.

4. Clause (cc) inserted by H.P. Act No. 14 of 1994 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 21.10.1994.

5. Clause (dd) inserted by H.P. Act No.5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991 vide notification No. LLR D (6) 4/91-Legs- dated 20.4.1991with effect from. 1.4.1991.

6. Added by Act No. 15 of 1986 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 28.5.1986 with effect from. 28.5.1986.
7. Clause (hh) inserted by Act No. 18 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 2.11.1991, with effect from. 2.11.1991.
8. Clause (jj) omitted by Act No. 8 of 1999 vide notification No. LLR. D (6)5/99-Legs. dated 23.4.1999 published in R.H.P. (Extra-ordinary) on 23.4.1999. The provisions of clause (jj) were as under:-
"(jj) the conditions subject to which the presence of a dealer or production of evidence by him can be dispensed with under sub-section (1-A) of section 14;"
9. Clauses (jjj) inserted by Himachal Pradesh Act No. 12 of 1979 with effect from. 1.4.1979, published in Rajpatra, Himachal Pradesh (Extra ordinary) on 16.6.1979.
- 10 Clause (nn) inserted by Act No. 5 of 1991 published in Rajpatra, Himachal Pradesh (Extra ordinary) on 20.4.1991 vide notification No.LLR D (6) 4/91-Legislation- dated 20.4.1991 with effect from. 1.4.1991
11. Clauses (rr) and (rrr) added by Act No.18 of 1991 published in R.H.P. (Extra-ordinary) on 2.11.1991 vide notification No.LLR.D(6)-23/91-Legs. dated 2.11.1991.
12. Clause (w) added by H.P. Act No.14 of 1994 published in RHP (Extra-ordinary) on 21-10-1994.

41. Provision In Case Of Inter-State Trade, Etc :-

Notwithstanding anything contained in this Act:-

- (a) a tax on the sale or purchase of goods shall not be imposed under this Act-
 - (i) where such sale or purchase takes place outside the [1] [State of Himachal Pradesh]; or
 - (ii) where such sale or purchase takes place in course of import of the goods into, or export of the goods out of, the territory of India;
- (b) a tax on the sale or purchase of any goods shall not be imposed here such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

Footnotes:

1. Substituted for the words "Union Territory of Himachal Pradesh" by A.O. 1973.

42. Power To Exempt :-

(1) The Government, if satisfied that it is necessary or expedient so to do [1] [in public interest, in respect] of cottage industries or small scale industries [2] *[, pioneer industries, new small scale industries, tiny industries, small service business establishment industries or other industry] may, by notification, exempt either wholly or to such extent only as may be specified in the said notification any class of co-operative societies or persons * [or such industry] from the payment of tax leviable on the sale of goods manufactured by such societies/or persons * [or such industry] subject to such conditions as may be specified in such notification:

[3] [Provided that the State Government may, for the purposes of this sub-section, issue notification exempting from tax-

(a) pioneer industries, except those mentioned in part (b) of this proviso, new small scale industries, tiny industries and small service business establishment industries approved by the Government with effect from the 18th day of April, 1992;

(b) pioneer industries manufacturing vegetable ghee and refined oil with effect from the 8th day of October, 1992; and

(c) other industry from the date of the publication of the notification.

Explanation - In this proviso the expressions pioneer industries, new small scale industries, tiny industries, small service business establishment industries and other industry shall have the meanings as may be prescribed.]

(2) Every notification issued under sub-section(1) shall, as soon as may be after it is issued, be laid before the State Legislature.

Footnotes:

1.Substituted for the words "in the interest of " with effect from. 31.5.2000 by Act No.13 of 2000 vide notification No.LLR.D(6)-10/2000 dated 25.5.2000 published in R.H.P. (Extra-ordinary) on 25.5.2000 read with notification No.EXN-F(11)-3/98 dated 29.5.200 published in R.H.P. (Extra-ordinary) on 29.5.2000.

2.*The signs and words ", pioneer industries, new small scale industries, tiny industries, small service business establishment industries or other industry", and the words "or such industry" inserted and shall be deemed to have been inserted with effect from. the 18th day of April, 1992, in section 42 by H.P. Act No. 14 of 1994 published in R.H.P. (Extra-ordinary) on 21.10.1994.

42A. Special Provisions Relating To Deferred Payment Of Tax By Industrial Units :-

(1) Notwithstanding anything contained in any other provisions of this Act, if the Government is of the opinion that with a view to provide incentives to the entrepreneurs setting up new industrial units in the State for manufacturing goods for sale, it is necessary or expedient in the public interest so to do, it may, under a scheme notified in this behalf under this Act, and subject to such restrictions and conditions as may be specified in such scheme, provide for deferred payment of tax payable under section 12 by such entrepreneur who is registered as a dealer under this Act.

[2] [Explanation - For the purposes of this sub-section the expression "new industrial units" shall also include "new tourism units" with effect from the 1st day of August, 1993.]

(2) Subject to the provisions of sub-section (1), the entrepreneur referred to therein, if eligible for grant of facility of deferred payment of tax under the scheme notified under sub-section(1), may make deferred payment of tax payable on the sale of goods manufactured by him.

Footnotes:

1. Section 42-A, 42-B, 42-C and 42-D inserted with effect from. 2.11.1991 by Act No. 18 of 1991 published in R.H.P. (Extra-ordinary) on 2.11.1991.

2. "Explanation" to section 42-A(1) added and shall be deemed to have been added w.e.f. the 1st day of August, 1993 by H.P. Act No.14 of 1994 published in (Extra-ordinary) Rajpatra, H.P. on 21-10-1994.

42B. Concessional Rate Of Tax On Certain Raw Materials :-

[1] [, processing and packing material.].- Notwithstanding anything contained in this Act, but subject to such restrictions and conditions as may be specified, the State Government may, if it is expedient in the public interest so to do, by notification exempt wholly or fix a concessional rate of tax, on the sale, to an entrepreneur, of goods, specified in his [2] [certificate of registration,-

(a) for use by him as raw material [3] [, plant or machinery] in the manufacture in Himachal Pradesh of any goods for sale therein or in the course of inter-State trade or commerce; and

(b) for use by him in the processing or packing of goods so manufactured for sale:] Provided that the tax on such sales shall be levied at full rates fixed under section 6 unless the dealer making the sale to such entrepreneur furnishes to the assessing authority in the prescribed form and manner a certificate duly filled in and signed by the eligible entrepreneur:

[4] [Provided further that the State Government may, by notification, allow the transfer of goods, in the course of inter-State trade or commerce, to such extent of the aggregate sales shown by the dealer in his returns for a financial year as may be specified in such notification:

Provided also that the State Government may, for the purposes of the preceding proviso, issue notification retrospectively-

(a) allowing transfer of [5] [manufactured goods] upto twenty-five per cent with effect from the 17th day of August, 1992; and

(b) allowing transfer of [6] [manufactured goods] upto one hundred per cent with effect from the 8th day of October, 1992.]

Footnotes:

1. Inserted by H.P. Act No.2 of 1995, published in RHP (Extra-ordinary) on 4-2-1995

2. Substituted by H.P. Act No.2 of 1995, published in RHP (Extra-ordinary) on 4-2-1995. Provisions prior to 4-2-1995 were as under:-

certificate of registration, for use by him as raw material in the manufacture in Himachal Pradesh of any goods-

(a) for sale in the State of Himachal Pradesh; or

(b) for sale in the course of inter-State trade or commerce:"

3. Added vide Act No. 21 of 2000 vide notification No. LLR. D (6)18/2000 Legs.

dated 21.9.2000, published in Rajpatra, Himachal Pradesh (Extra ordinary) on 21.9.2000.

4.Provisos added in section 42-B by H.P. Act No.14 of 1994 published in RHP (Extra-ordinary) on 21-10-1994.

5. Substituted for the word "goods" by H.P. Act No.2 of 1995, published in H.P. Rajpatra (Extra-ordinary) on 4-2-95, w.e.;f. 4-2-95.

6.Substituted for the word "goods" by H.P. Act No.2 of 1995, published in H.P. Rajpatra (Extra-ordinary) on 4-2-95, w.e.;f. 4-2-95.

42C. Set Off Of Tax In Respect Of In Respect Of Tax Paid Goods In Certain Circumstances :-

[1] [(1) xx xx xx xx]

(2) When the registered dealer purchases any goods, which have suffered tax either under sub-section (2) of section 6 at full rates or under section 42 or section 42-B at the concessional rates, for use of such goods as raw-material in the manufacture in Himachal Pradesh of any goods for sale, he shall, [2] [on the sale of final product be entitled to a set off of tax equal to] the amount of tax already paid by the selling dealer.

Footnotes:

Sub-section (1) omitted with effect from. 31.5.2000 by Act No.13 of 2000 vide notification No.LLR.D(6)-10/2000-Legs. dated 25.5.2000 published in R.H.P. (Extra-ordinary) on 25.5.2000 read with notification No.EXN-F(11)-3/99- dated 29.5.2000 published in R.H.P. (Extra-ordinary) on 29.5.2000. The provisions of sub-section (1) prior to 31.5.2000 were as under:--

"(1) Subject to such restrictions and conditions as may be prescribed, a set off, as provided in sub-section (2), shall be granted in such manner as may be prescribed, to a registered dealer in respect of tax paid goods in the circumstances mentioned in sub-section (2)."

Substituted for the words "be entitled to a set off of tax equal to the difference between the aggregate liability on the sale of final product minus" by Act No.8 of 1999, published in R.H.P.(Extra-ordinary) on 23.4.1999.

42D. Penalty For Utilization Of Goods For Other Purposes :-

Where any goods purchased by a registered dealer either under sub-section (1) of section 42 or [1] [xx] section 42-B, at concessional rates, for use by him in the manufacture of any goods in Himachal Pradesh, other than goods declared tax free under section 7,-

(a) for sale in the State of Himachal Pradesh; or

(b) for sale in the course of inter-State trade or commerce; are utilized by him for any purpose other than those specified in clause (a) or (b), such dealer shall be liable to pay as penalty, such amount not less than the difference between the amount of tax on the sale of such goods at the full rate applicable thereto under section 6 and the amount of tax payable under sub-section(1) of section 42, or [2] [xx] section 42-B, but not exceeding one and a half times the amount of tax payable at such full rate, as any officer appointed under sub-section(1) of section 3 may, by order, impose:

Provided that no order imposing such penalty shall be passed under this section unless such dealer has been given a reasonable opportunity of being heard.]

Footnotes:

The words, brackets and figure "sub-section (1) of" omitted by Act No.12 of 1992 published in RHP (Extra-ordinary) on 12-5-1992 which came into force with effect from. 1-8-1992 vide notification No.EXN-F(11)1/92 of 28-7-1992, published in RHP (Extra-ordinary) on 31-7-1992

The words, brackets and figure "sub-section (1) of" omitted by Act No.12 of 1992 published in RHP (Extra-ordinary) on 12-5-1992 which came into force with effect

from. 1-8-1992 vide notification No.EXN-F(11)1/92 of 28-7-1992, published in RHP (Extra-ordinary) on 31-7-1992

43. Powers To Amend Schedule C [1] [Xx Xx] :-

The Government, after giving by notification not less than 30 days notice of its intention so to do, may, by notification, add to or delete from, or otherwise amend Schedule C [2] [xx xx] and thereupon Schedule C [3] [xx xx] shall be deemed to be amended accordingly.

Footnotes:

1. The word and sign "or Schedule D" deleted with effect from. 13.10.1978 by Act No.32 of 1978 published in R.H.P. (Extra-ordinary) on 13.10.1978.
2. The word and sign "or Schedule D" deleted with effect from. 13.10.1978 by Act No.32 of 1978 published in R.H.P. (Extra-ordinary) on 13.10.1978.
3. The word and sign "or Schedule D" deleted with effect from. 13.10.1978 by Act No.32 of 1978 published in R.H.P. (Extra-ordinary) on 13.10.1978.

44. Repeal :-

(1) The East Punjab General Sales Tax Act, 1948, as extended to the Union Territory of Himachal Pradesh by Notification of the Government of India in the Ministry of Home Affairs No. GSR.767 (8/3/57-Judl -ii), dated the 30th August, 1958 and the Punjab General Sales Tax Act, 1948 as in force in the territories transferred to that Union Territory under section 5 of the Punjab Re-organisation Act, 1966, are hereby repealed.

(2) The repeal of any of the enactments under sub-section (1) shall not affect:-

- (a) the previous operation of any such enactment, or
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against any such enactment, or
- (c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(3) Subject to the provisions of sub-section (2), anything done or any action taken, including rules, notifications and orders made, instructions or directions issued or rights acquired and liabilities

incurred under any of the enactments repealed under sub-section (1), shall-

(a) be deemed to have been respectively done, taken, made, issued, acquired and incurred under the corresponding provision of this Act; and

(b) continue in force unless and until directed otherwise or superseded by anything done or any action taken under this enactment by the State Government or other competent authority.

SCHEDULE 1

SCHEDULE A

[See the first proviso to sub-section (1) of section 6]

1. Motor Vehicles, including accessories & chassies of Motor Vehicles, Motor Tyres & Tubes & spare parts of motor Vehicles.
2. Motor cycles and Motor cycles Combinations, Motors Scooters, motorettes and accessories Tyres, tubes and spare parts thereof.
3. Refrigerators and air-conditioning Plants and components parts thereof.
4. Wireless reception instruments and apparatus, radios and radio-gramophones, electrical valves, accumulators, amplifiers and loudspeakers and spare parts and accessories thereof.
5. Cinematographic equipment including cameras, projectors and sound recording and reproducing equipments, lenses, films and parts and accessories required for use therewith.
6. Photographic and other cameras and enlargers, lenses, films and plates, papers and cloth and other parts and accessories required for use therewith.
7. All watches and parts thereof, but not including clocks, time pieces and parts thereof.
8. xx xx xx xx xx xx xx
9. All furniture other than that of iron and steel and wood.
- 10 All arms including rifles, revolvers, pistols and ammunition.
11. Cigarette cases and lighters.
12. Dictaphone and other similar apparatus for recording sound and spare parts thereof.
13. Sound transmitting equipment including telephones and loudspeakers and spare parts thereof.
14. Typewriters, tabulating machines, calculating machines (but not including computer hardware and software, printers UPS systems and other accessories) and duplicating machines and parts thereof.
15. Binoculars, telescopes and opera Glasses.
16. Gramophones and component parts there of and records.
17. Cosmetics, perfumery and toilet goods but not including tooth paste, tooth-brush, tooth-powder, kum-kum, dhoop and agarbatti.
18. Electrical appliances excluding electric tubes, electric bulbs, electric motors, motor starters and mono-block pumping sets.
19. Pile carpets.
20. Cutlery (Table)
21. xx xx xx xx xx xx xx
22. XX XX XX XX XX XX
23. Leather goods but not including footwear.
24. Glassware, Glaze-ware and China-ware including crockery.

25. Liquor (Country liquor, Foreign Liquor and Indian made foreign liquor including beer but excluding Indian made cider and wines).
26. xx xx xx xx xx xx xx
27. xx xx xx xx xx xx xx
28. Articles made wholly or principally of stainless steel but not including filters, Blades, Razors, utensils and surgical instruments
29. Perambulators
30. Furs and articles of personal or domestic use made from furs.
31. Plastic, celluloid, bakelite goods and goods of similar substances of the value exceeding fifty rupees per piece but not including plastic footwear.
32. Laminated sheets and sunmica sheets.
33. Aerated water
34. Timber but not including converted Timber.
35. Converted Timber.
36. Polythene bags.
37. Lime stone
38. Narcotics
39. Molasses
40. Rectified spirit
41. Motor spirit including aviation Turbine fuel but excluding diesel
42. Diesel
43. Silk excluding Raw silk.
44. Fire Works
45. Lifts and elevators
46. Marble and marble-chips
47. Sandal wood and its oil
48. Transformers
49. Transmission wires and towers.
50. Voltage stabilizers
51. synthetic gems
52. Naptha
53. Spark plugs
54. Oxygen and gases excluding Cooking gas
55. A.S.C.R. conductors
56. Weather proofing compounds
57. Preserved food articles
58. Cushions and mattresses
59. Musical instruments
60. Hair oils
61. Air circulators
62. Rubber goods
63. Soap including toilet soaps, detergent cakes and powders but not including washing soap (desi)
64. Adhesives
65. P.V.C. articles
66. Clocks
67. Washing machines
68. Ivory products
69. Asphaltic roofing
70. Cables

SCHEDULE 2

SCHEDULE B

(All the entries of Schedule B of the H.P. GST Act, 1968 have been rearranged in alphabetical order and entries No. 66 and 76 dealing with exemption of sales tax on sale of manufactured goods by certain industries have been taken at the end.)

Agricultural implements and parts thereof as per detail below:-

(i) Bullock Drawn:

Bund former

Cane juice boiling pan & grating

Cart

Chaff cutter

Cultivator or triphali

Ditcher,

Fertilizer drill

Harrow

Leveller or scoop

Mower

Persian wheel & bucket

chain or washer chain

Plank or float

Planter

Plough

Reaper

Ridger

Roller

Seed drill,

Seed-cum-fertilizer drill.

Sugarcane crusher.

Thrasher or palla.

Transplanter.

Yoke.

(ii) Ordinary agricultural implements:

Baguri

Dibbler

Fertilizer seed broadcaster.

Flame gun

Gandasa.

Groundnut dicorticator.

Hand driven chaff cutters

Hand Hoe or Khurpa.

Hand Wheel Hoe.

Horticulture tools like budding grafting knife, secateur, pruning shear or hook, hedge shear, sprinkler, rake

Jandra

Maize Sheller.

Manure or seed screen.

Puddler.

Seed Grader.

Sickle.

Soil injector.

Spade.

Sprayer, duster and sprayer-cum-duster.

Tangli.

Tasla.
 Transplanter
 Wheel barrow.
 Winnowing fan or winnower,
 (iii) Power implements:
 Centrifugal pump
 Chaff cutter
 Groundnut dicticator
 Maize sheller
 Poultry feed grinder and mixture
 Power sprayer or duster
 Seed grader
 Seed treater
 Self propelled combine
 Thrasher
 Transplanter
 Winnower
 (iv) Tractor drawn agricultural implements:
 Bund former
 Cage wheel
 Combine
 Cultivator or tiller
 Ditcher
 Fertilizer broadcaster
 Fertilizer drill
 Groundnut digger shaker
 Harrow
 Harvester
 Hoe, rotary hoe or rotovator
 Leveller or scoop
 Plank or float
 Planter
 Plough
 Potato harvester or spinner
 Puddler
 Ridger
 Reaper or mower,
 Roller
 Seed-cum-fertilizer drill
 Seed drill
 Sprayer, duster or sprayer-cum-duster.
 Trailer
 Transplanter

(v) Metal Store bins

Agricultural or horticultural produce and saplings of trees sold by person a member of his family grown by himself or grown on any land in which he has an interest whether as owner or usufructory mortgagee, tenant or otherwise.

Articles of handicrafts and readymade garments made out of handloom cloth by the industrial co-operatives when sold through the Government Emporium and the sales depots of the Punjab Weavers Apex Co-operative Society Ltd.

Articles of handicrafts prepared by the Tibetan Refugees Handicrafts-cum-Production Centre, Dalhousie, Tibetan Handicrafts Production-cum-sale Cooperative

Industrial Society Limited, Mcleodganj, Dharamshala Cantt., and Tibetan Craft Community Tashi Jong Colony, Paprola, HP-when sold by such center or any of its branch office.

Artificial hearing aids and their accessories.

Artificial limbs and rehabilitation aids for the handicapped.

Baan-when sold by maker himself or by any other member of his family provided that the maker does not employ any outside labour or use power at any stage for making the Baan.

Books

Bakery goods other than bread i.e. double roti prepared without using power.

Bardana (packing material) and containers-when sold by a person who deals exclusively in goods declared tax free u/s 7, but sells packing material and containers only as incidental to his main business.

Bee hives.

Bangles made of glass, plastic and lakh.

Bindi and kumkum

Bread (i.e. Double-Roti).

Bricks and brick bats (excluding re-fractory bricks).

Canvas cloth tarpaulines and similar other products manufactured with cloth as base as are manufactured in textile mill, powerloom factories and processing factories.

Cattle feed including fodder of every type (dry or green) but excluding chilka of foodgrains, pulses or oil cakes.

Chloroquines.

Common salt.

Condoms-when sold through general trade agencies.

Countrymade Juties including Chamba chappals and sandals-when sold by the maker of such shoes himself or by any other member of his family, provided that the maker does not employ any outside labour or uses power at any stage for making the shoes.

Edible oils produced from sarson, toria and til in indigenous kohlu, whether worked by animals or human beings-when sold by the owners of such kohlus.

Eggs-except when sold in tins bottles or cartons.

Exercise & drawing books.

Electric energy.

Earthenware made by kumhars.

Fertilizers except chemical fertilizers and oil cakes.

Fish-except when sold in tins, bottles or cartons.

Flowers.

Foodgrains supplied free of cost by the Govt. of India, under the Food for Work Programme or other relief programme notified as such by the Government-exempted if declaration from the distributing Government Department is produced. Food preparations ordinarily sold by Halwais and Dhabawalas-when prepared and sold by Halwais and Dhabawalas themselves.

Footrules, geometry box and its instruments, sketch pen, drawing colour, pencil eraser, pencil sharpener and ink tablets of the type usually used in schools.

Fresh fruits including tender/ watery coconut.

Fuel oil/heavy stock used as feed stock in fertilizer production.

Geomatery box and its instruments.

Graphite lead pencils.

Gajjaks.

Golies.

Goods sold to Indian Red Cross Society and St. John Ambulance Society.

Goods sold to serving military personnel and ex- servicemen by the C.S.D. canteens.

Hand spun yarn-when sold by one who deals in hand spun yarn exclusively.

Hops (*Humulus lupulus*) flowers(fresh or dried).

Hurricane Lantern, Wick Stoves and their parts

Judicial and Non-judicial stamps, entertainment duty stamps, passengers and goods tax stamps and standard water marked petition paper.

Kikar bark.

Kuth.

Leather cloth and inferior or imitation leather cloth ordinarily used in book-binding (rubberised), tissue or synthetic water proof fabrics whether single- textured or double-textured; and book binding cotton fabrics.

Live stock.

Lottery Tickets.

Maize gifted by the Govt. of India and sold for human consumption in Tribal and draught affected areas, poultry and animal feed sectors-exempted if declaration from the concerned distributing govt. department is produced.

Mango stones and Mango kernels.

Meat-except when sold in tins, bottles or cartons.

Milk-except condensed and dried milk

News print sold to small and medium news papers having circulation upto 15000 and 50000 copies respectively per issue-when circulation is certified by a chartered accountant or by a professional and reputed accounts body or institution (If circulation is up to 2000 per issue, certificate of District Magistrate may be submitted.)

Non-conventional energy devices:

Agricultural and municipal waste conversion devices producing energy.

Biogas engines, biogas plants, gas holder and chulla (Burner)

Electrically operated vehicles including battery powered or fuelcell powered vehicle.

Equipment for utilizing ocean waves and thermal energy in the oceans.

Flat plate solar collectors, Black continuously Plated Solar Selective Coating Sheets (in cut lengths or in coils) and fins and tubes.

Solar air conditioning systems.

Solar collectors-concentrating and pipe type

Solar cold storage systems.

Solar cookers.

Solar crop driers and systems.

Solar energy equipments.

Solar photovoltaic modules and panels for water pumping and other applications.

Solar power generating systems.

Solar pumps based on solar thermal and solar photovoltaic conversion.

Solar refrigerations.

Solar still and desalination systems.

Solar water heaters and systems.

Special devices including electric generators, pumps running on wind energy.

Wind mills and any special designed devices which run on wind mills.

Oral contraceptive pills-Mala i.e. Mala-N and Mala-D, Ecroj, Pearl, Moti, Suvidha and Apsara.

Pan

Paper Bags

Periodicals

Photographs including X-Ray photographs- when sold by photographers and radiologists preparing them.

Poultry feed, that is to say, a mixture of proteins, salts and minerals, vitamins, antibiotics and coccidiostats, whether such mixture contains carbo-hydrates or not.
Pre-recorded Cassettes containing "Azadi-ki-Kahani"(Story Of Freedom) and the Cassettes of the historic Utterances of Mahatma Gandhi and Jawahar LalNehru in their own voices which contains National Anthem and Patriotic Songs in various Regional languages.

Raw wool

Reori, Patashas, Gajjaks, Misri(candy or cooza), Golies, Boora, Makhanas, Marunda and Phulian.

Sera and vaccines manufactured by Himachal Pradesh Central Research Institute, Kasauli(H.P.)

Spinning wheel(Charkha) and its parts.

Seeds and saplings

Sugar

Straw covers-when sold by manufacturers themselves or through their union.

Textiles-all varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon whether manufactured by handloom or powerloom or otherwise except carpets, druggets, woollen durees and cotton floor durees, including such textiles on which knitting and embroidery work has been done.

Takhties used by students in schools

Tobacco whether cured, uncured or manufactured and all its products including biris, cigarettes, cigars

Vegetables including green chillies-except when sold in tins, bottles or cartons

Water(aquapura)-Except when sold in containers

Wheat-bran(i.e. Chokar)

Wooden Fruit Packing Cases

Writing chalks and crayons

Writing Slates and Slate pencils

<p>Sale of electronic good manufactured by (a) existing Electronic Industrial Units, and (b) new Electronic Industrial Units situated in Himachal Pradesh including Computer Software and Electronic Assembly Units where value addition in assembling (a) by an existing Electronic Assembly Unit is 25% or more and, (b) by a new Electronic Assembly Unit is more than 14% but excluding: (i) T.V. Assembly units; (ii) Radio Assembly units (iii) V.C.R./V.C.P. Assembly units; and</p>	<p>(1) In respect of the existing Electronic Industrial Units and existing Electronic Assembly Units, the exemption shall be granted only when:- (i) the Units (other than the existing Electronic Assembly Units) come into production between 1-4-1985 and 30-9-1996 and the existing Electronic Assembly units where value addition in assembling is 25% or more come into production between 31-7-1992 and 30-9-1996; (ii) the Units file by 30th April every year with the Assessing Authority concerned a certificate in form R.M. II prescribed by the Himachal Pradesh Government, Excise and Taxation Department Notification No.1-12/73-E&T-III, dated the 7th February, 1992, published in Rajpatra Himachal</p>
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<p>(iv) Other units where value addition in assembling (a) by existing Electronic Assembly unit is less than 25% and (b) by a new Electronic Assembly units is 14% or less.</p>	<p>Pradesh (Extra-Ordinary) on 12-2-1992, obtained from the authority specified therein; (iii) exemption will be available for ten years from the date, the units come into production; (iv) the units comply with all the provisions of the Act, the rules framed and also the notifications issued thereunder; and (v) the unit was registered and continues to be so registered as a dealer under the Himachal Pradesh General Sales Tax Act, 1968:</p>
	<p>Provided that subject to compliance of sub-condition No.(ii), (iv) and (v) of condition No.(1) above, the Electronic Assembly Units, except the following which came into commercial production between the period from 1-4-1991 to 30-9-1996 and where the value addition in assembling is more than the 14% shall also be eligible for the grant of exemption from the payment of sales tax for the period commencing from the date of this notification and ending on the 31st day of March, 2001:- (i) T.V. Assembly units; (ii) Radio Assembly units; (iii) V.C.R./V.C.P. Assembly units; and (iv) Other units where value addition in assembling is 14% or less.</p>
	<p>(2) In respect of new Electronic Industrial Units and Electronic Assembly Units where value addition in assembling is more than 14% the exemption shall be granted only when:- (i) the units came into commercial production between 1-10-96 and 31-3-1999. (ii) the units file by 30th April every year with the Assessing Authority concerned, a certificate in Form R.M.II prescribed by the Himachal Pradesh Government, Excise and Taxation Department Notification No.1-12/73-E&T-III dated the 7th February, 1992, obtained from the authority specified therein; (iii) the unit is registered as a dealer under the Himachal Pradesh General Sales Tax Act, 1968; (iv) the</p>

	<p>unit comply with all the provisions of the Act and the rules framed and also the notifications issued thereunder; and (v) the exemption will be available:- (a) to units located in category A and B Industrial Blocks for ten years from the date the unit comes into commercial production; and (b) to units (including Pioneer Units and Prestigious Units) located in category G Industrial Block for five years from the date the units comes into commercial production; and (vi) no exemption shall be available to new Electronic Industrial Units manufacturing goods listed in Negative List.</p>
	<p>Explanation -In this item the expressions "Pioneer industrial units", "Prestigious Industrial units", negative list and industrial block shall have the same meanings as assigned to them in Government of Himachal Pradesh, Excise and Taxation Department Notification No.EXN-F(13)1/96-(iii) dated 27-1-1997, and EXN-F(13)1/96(vi) dated 27-1-1997" and EXN-F(13)1/96(vi) dated 27-1-1997.</p>
"76. Sales of goods manufacture by following (a) existing industrial units, and (b) new industrial units:-	(1) In respect of the existing industrial units, the exemption shall be granted only when:-
<p>(a) existing industrial units: (i) Agriculture-Horticulture produce based industries except Breweries, Distilleries, non-fruit based wineries and bottling plants (both for Country Liquor and Indian Made Foreign Liquor); (ii) Food products and mineral water bottling industry other than those specified at Sl. Nos. 1, 2, 3, 5, 6, 7, and 24 of the negative list notified vide this department Notification No.1-12/73-E&T-III dated 25-9-92 published in Rajpatra (Extra-ordinary on 1-10-92. (iii) Herbal produce based Industries and Aromatic Industries; (iv) Wool based industry (including Angora Wool); (v) Sericulture; (vi) Garments and Knitwear manufacturing industry; and (vii) Projects with investment of more than Rs.300 crores and those with 100% export oriented industries.</p>	<p>(a) the units file by 30th April every year with the Assessing Authority concerned, a certificate in Form R.M.II as prescribed by the Himachal Pradesh Government Excise and Taxation Department Notification No.1-12/73-E&T-III dated the 7th February, 1992 issued by the authority specified therein;</p>
	(b) the exemption will be available for

	(b) the exemption will be available for a period of 10 years from the date of commencement of production by such industrial unit,; and
	(c) the units comply with all provisions of the Act the rules framed and also the notifications issued thereunder.
	(2) In respect of new industrial units, the exemption shall be granted only when:-
	(i) the units file by 30th April every year with the Assessing Authority concerned, a certificate in Form R.M.II, as prescribed by the Himachal Pradesh Government, Excise and Taxation Department Notification No.1-12/73-E&T-III, dated the 7th February, 1992, published in Rajpatra Himachal Pradesh (Extra-Ordinary) on 12-2-1992, issued by the authority specified therein;
	(ii) the exemption will be available for a period of ten years from the date of commencement of commercial production by such industrial units located in A, and B category of Industrial Block only including the industrial units which fall in the negative list (other than those located in C category of Industrial Block) notified vide Himachal Pradesh Government, Excise and Taxation Department Notification No.1-12/73-E&T-III, dated 25-9-92 published in Rajpatra, Himachal Pradesh (Extra-Ordinary) on 1-10-92 and as amended vide Notification No. EXN-F(13)1/96 (vi), dated 27-1-97. In case of Fruit, Vegetable, Maize and other grain based industrial unit or a combination of these (i.e. Agriculture-Horticulture based industries) the exemption from the payment of sales tax will be available for a period of twelve years, ten years and ten years in respect of such industrial units located in A, B and C category of industrial block respectively; and
	(iii) units comply with all the provisions of the Act, the rules framed

	and also the notifications issued thereunder.
<p>(b) New Industrial units: (i) Agriculture-Horticulture produce based industries except Breweries, Distilleries, non-fruit based wineries and Bottling Plants (both for Country Liquor and Indian Made Foreign Liquor); (ii) Food products and mineral water bottling industry other than those specified at Sl.No.1, 3 and 16 of the negative list notified vide this departments Notification No.1-12/73-E&T-III, dated 25-9-92,published in Rajpatra, Himachal Pradesh (Extra-Ordinary) on 1-10-92 and as amended vide Government of Himachal Pradesh Excise and Taxation Department Notification No. EXN-F(13)1/96(vi), dated 27-1-97. (iii) Herbal produce based industries and Aromatic industries; (iv) Wood and industry (including Angora wool); (v) Sericulture; (vi) Garments and knitwear manufacturing industry; (vii) 100% Export oriented industries; and (viii) Projects with fixed capital investment of more than Rs.300 crores going into commercial production on or after 1-4-95 and which are registered with the Empowered Committee after 31-3-95 except the industries specified in the negative list notified vide notification No.1-12/73-E&T-III, dated 25-9-92, published in Rajpatra Himachal Pradesh (Extra-Ordinary) on 1-10-92 and as amended vide Government of Himachal Pradesh, Excise and Taxation Department notification No. EXN-F(13)/96(vi) dated 27-1-97.</p>	<p>Explanation -(1) In this item,- (i) "existing industrial unit" means industrial unit which commences production between the period from 1-4-91 to 30-9-96 and which was registered and continues to be so registered as a dealer under the Himachal Pradesh General Sales Tax Act, 1968 and will include any existing unit which is eligible to get fresh registration as per the guidelines issued by the Development Commissioner, Small Scale Industries, Government of India, from time to time, but will not include an industrial unit, small medium or large, which is formed as a result of re-establishment, mere change of ownership, change in the constitution, restructuring or revival of an existing industrial unit. (ii) "new industrial unit" means an industrial unit which commences commercial production between 1-10-96 and 31-3-99 and is registered as a dealer under the Himachal Pradesh General Sales Tax Act, 1968.</p>
	<p>(2) For the purposes of sub-item (vii) the expression "100% export oriented industries" means the Industries defined as such by the Government of India from time to time.</p>
	<p>(3) In this item the expressions "Industrial Block", "negative list" and "Fixed Capital investment" shall have the same meanings as defined vide Himachal Pradesh Government, Excise and Taxation Department Notification No.1-12/73-E&T-III, dated 25-9-92, published in Rajpatra</p>

Himachal Pradesh (Extra-Ordinary) on 1-10-92, and as amended vide Notification No.EXN-F(13)1/96 (vi) dated 27-1-1997."
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SCHEDULE 3

SCHEDULE C

[See the third provision to sub-section(1) of section 6]

1. Resin (crude pine gum)

2. [1] [XX XX XX]

Footnotes:

1. The entry of "Groundnut deleted vide notification No. Exn. F(1)8/77, dated 16.9.1987 published in R.H.P. Extra-ordinary, on 20-11-1987.