

Jammu And Kashmir General Sales Tax Act, 1962

20 of 1962

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Authorities Under This Act
4. Liability To Tax Under This Act
 - 4A. Surcharge Tax
 - 4B. Levy Of Purchase Tax
 - 4C. Burden Of Proof
5. Exemption From Tax
 - 5A. Composition Of Tax Payable
 - 5 B . Liability To Tax Of Persons Not Observing Conditions Of Exemption Or Licence
6. Registration Of Dealer
 - 6A. Provisional Registration
 - 6B. Issue Of Permits
 - 6 C . Furnishing Of Security For The Payment Of Tax Etc. By A Dealer
7. Return Assessment And Re-Assessment
8. Payment And Recovery Of Tax
 - 8A. Section 8A
 - 8B. Realization Of Amount By Way Of Tax
 - 8C. Special Provision In The Interest Of Industrial Development
9. Tax Of Deceased Persons Payable By Representatives
10. Refunds
 - 10A. Power To Withhold Refund In Certain Cases
 - 10B. Interest On 1[] Refunds
11. Appeals
 - 11A. Appeals
12. Revision
 - 12A. Composition And Functions Of The Tribunal
 - 12B. Application Of Limitation Act
 - 12C. Power Of The Tribunal
 - 12D. Statement Of Case To The High Court
13. Power To Withdraw And Transfer Cases
14. Accounts To Be Maintained By Dealers
15. Power To Order Production Of Accounts And Power Of Entry And Inspection
 - 15A. Establishment Of Checkposts And Inspection Of Goods In Transit
 - 15B. Forwarding Agency, Etc. To Obtain Certificate Of Registration

And Submit Returns

15C. Deleted

16. Recovery Of Tax As Arrears Of Land Revenue

16A. Further Mode Of Recovery

16AA. Liability Under The Act To Be First Charge

16B. Bar Of Limitation For Commencing Proceeding

16C. Deduction Of Tax By Certain Persons And Deposit Thereof In The Treasury

16D. Clearance Certificate In Relation To Taxable Goods

17. Offences And Penalties

17A. Penalty For Failure To Submit Returns

18. Composition Of Offences

19. Bar On Certain Proceedings

20. Indemnity

21. Liability In Case Of Firms Or Associations Discontinued, Dissolved Or Transferred

21A. Recovery Of Tax From Private Companies

22. Powers Of Commissioner And His Assistants To Take Evidence On Oath Etc

22A. Appearance By Authorised Representative

23. Omitted

24. Rectification Of Mistakes

24A. Omitted

25. Certain Information To Be Confidential

25A. Power To Give Instructions

25B. Computation Of Taxable Amount

25C. Determination Of Issues

25D. Immunity From Prosecution, Penalty And Interest In Certain Cases

26. Power To Make Rules

27. Repeal

28. Validation Of Imposition And Collection Of Taxes On Controlled Goods Under Sales Tax Laws

28A. Validation Of Acts Done After Expiration Of Ordinance No. IX Of 1968

29. Validation Of Assessment, Etc

30. Validation Of Imposition Or Collection Of Tax On Food Or Any Article Of Food Or Other Eatables Or Any Other Drinks Under The Sales Tax Act

Jammu And Kashmir General Sales Tax Act, 1962

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Preamble- An Act to provide for the levy of a general tax on the sale 1[or purchase] of goods in the state and for other matters connected therewith. Be it enacted by the Jammu and Kashmir State Legislature in the thirteenth year of the Republic of India as follows: -

1. Short Title, Extent And Commencement :-

This Act may be called the Jammu and Kashmir General Sales Tax Act, 1962.

2. It extends to the whole of the state;] Provided that nothing herein shall apply to the District of Ladakh up to 31[31st day of March, 1973]

3. It shall come into force on such date as the Government may by notification in the Government Gazette appoint in this behalf.

2. Definitions :-

In this Act, unless the context otherwise requires: -

(a) "Appellate authority" means an authority appointed by the Government for the purposes of this Act;

[(aa) "Appropriate Authority" means the Assessing Authority having jurisdiction over a case to make assessment or any other authority seized with the jurisdiction in respect of other proceedings.]

[(b) "Assessing authority" means any person appointed by the Government under section 3 to exercise the powers and perform the functions of the assessing authority under the Act and includes an officer in charge of a check post or notified area;]

[(bb) "Assessee" means a person including a dealer who is liable to pay tax, penalty, interest, or any other sum under this Act and also includes a person against whom any proceedings have been taken under this Act;]

1 The word "or purchase" inserted vide Act XX of 1981 and deemed to have come into force w.e.f.1.7.81

2 sub section 2 substituted by Act XXVII of 1967 w.e.f.21.7.1962

3 substituted by Act No. XXV of 1972 for "31st day of March 1971". Subsequently the Govt. under section 5 of the Act granted exemption from payment of sales tax to the Districts of Ladakh & Kargil from time to time and at present vide SRO 40 dated: 08-03-1985 the exemption has been extended beyond 01-04-1987 subject to the fulfillment of conditions as laid down in the said SRO.

4 enforced w.e.f.1.9.1962 by SRO 182 dated 16.8.1962

5 clause (aa) inserted vide Act No. X of 1984 w.e.f. 1.5.1984

6 substituted by Act No. XIII of 1978

7 inserted ibid.

(c) "Assessment year" means twelve months ending 31st March;

(cc) "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 the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern;

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

(d) "Certificate" means a certificate granted or renewed under this Act;

(e) "Commissioner" means any person appointed by the Government to exercise functions of Commissioner under this Act;

(f) "Contract" means any agreement for carrying out for cash or deferred payment or other valuable consideration-

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

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

(iii) the fitting out improvement or repair of any movable property, or

(iv) the provisions of any amenities or service or labour or the supply of taxable goods whether separately or jointly as a part of the same transaction or otherwise.]

(g) "Dealer" means any person who carries on (whether regularly or otherwise) the 4[business of selling, purchasing], supplying or distributing goods, directly or indirectly, for cash or for deferred

1. inserted by Act XIII of 1978
2. sub clause (iv) added by Act No. XXV of 1972
3. substituted by Act XIII of 1978
4. substituted by Act XX of 1981. payment, or for Commission, remuneration, or other valuable consideration and includes, -

(i) a factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling, ¹[purchasing], supplying or distributing goods belonging to any principal whether disclosed or not;

(ii) Notwithstanding any condition to the contrary contained in the agreement with the principal, an auctioneer who carries on the business of selling, ¹[purchasing] or auctioning goods belonging to any principal, whether disclosed or not or whether the offer of the intending purchaser is accepted by him or the principal or nominee of the principal;

(iii) a club or any association selling or ¹[purchasing] goods;

(iv) a contractor supplying, selling, ¹[purchasing] or using or consuming goods in the execution of work contract; Explanation I-

Every person who acts as an agent in the State of a dealer residing outside the state and sells ¹[purchases], or distributes goods in the state or acts on behalf of such a dealer as-

(i) mercantile agent;

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

(iii) an agent for the collection or the payment of sale price of goods or as a guarantor for such collection or payment shall be a dealer for the purposes of this Act.

Explanation II- Any department of the Government which, whether or not ¹[in the course of business, sells or buys], supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration shall, be deemed to be a dealer for the purposes of this Act.

Explanation III- For purposes of this clause Government includes the Central Government or the Government of any other State.]

¹ substituted/omitted by Act XX of 1981

¹[(h) "Goods" means all kinds of movable property (not being actionable claim, newspapers, stock, shares securities) and includes

2[(i) food or any articles of food or other eatables or any drink (whether or not intoxicating) supplied or served by way of or as part of any service or in any manner whatsoever, with or without any amenity [in a hotel, restaurant or any other place of eating by whatever name called;

Provided that where a composite charge is payable in respect of residential accommodation food and drink, the sale price of food and drink included therein shall be determined in such manner as may be notified by the Government notification in the Government gazette;]

3[(i-a) services provided in the shape of works contract, whether divisible or indivisible, involving the transfer of property or not, services in the form of lodging facilities provided by the hotels, services provided by Telecom/Cellular phone agencies by way of transfer of right to use any goods or otherwise, services provided by private nursing homes, beauty saloons, photographers and advertisers rendered by way of or as part of any contract or in any other manner whatsoever involving skill and labour or any other services as may be notified by the Government from time to time;

(iii) all materials, articles and commodities, whether or not to be used in construction, fitting out, improvement or repair of movable

or immovable property;

(iv) Growing crops, grass, trees, plants including the produce thereof and other things attached to or forming part of the land which are agreed to be served before sale or under contract of sale; and

(iv) right to use any goods for any purpose, whether or not, for a specific period.]

1 Substituted by Act XX of 1981

2 Amended vide Act No. X of 1984 w.e.f.1.5.1984.

3 substituted vide Act No .IV X of 2005

1 [(hh) "Controlled goods" means any goods the distribution or price whereof is controlled by law;]

(i) "Import" means bringing of goods into the state from any place outside its limits;

(j) "Licence" means a licence granted or renewed under this Act;

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

2[(kk) "person" includes--

(i) an individual,

(ii) Hindu undivided family,

(iii) a firm,

(iv) a local authority,

(v) any other association or persons or body of individuals, whether incorporated or not, or

(vi) any Department of the Government.]

(kkk) "Purchase price" means the amount of valuable consideration paid or payable by a person for any purchase made including any sum paid or payable, for anything done by the seller in respect of goods at the time of or before delivery thereof, other than the actual cost of inward freight or delivery or the cost of installation when such cost is separately charged.]

4[(l) "Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods, otherwise than by mortgage, hypothecation, charge or pledge, by any person for cash with or deferred payment or for any other valuable consideration and includes a transfer of property in goods or in some other form--

5[(i) being eatables including food or any drink (whether or not intoxicating) by way of or as part of any service or in any other manner whatsoever with or without any other amenity,

1 Clause (hh) inserted by Act XXIX of 1966

2 Inserted by Act XIII of 1978

3 Clause (kkk) inserted by Act No. XX of 1981 w.e.f. 1.7.1981

4 clause (l) substituted by Act XX of 1981 w.e.f. 1.7.1981

5 Re-numbered vide Act No. IV of 2005

(ii) on hire purchase or any system of payment by instalments notwithstanding that the seller retains the title to any goods as security for payment of price,

(iii) in the course of supplies or distribution by a society or a club or any association or any other body of persons, whether or not, incorporated, and

(iv) transfer of the right to use any goods for any purpose (whether or not for a specified period), and the word purchase shall be construed accordingly;]

1[(v) in case of services covered under the definition of goods, the transaction, whether involving the transfer of property or not, shall be deemed to be a sale by the person making the same.]

Explanation 1. A transfer of property in goods for cash or deferred payment or other valuable consideration, whether on licence, permit or otherwise, shall notwithstanding that goods are controlled goods be deemed to be a sale.

Explanation 2.-(a) The sale of goods shall be deemed, for the purposes of this Act, to have taken place in the state, wherever the contract of sale might have been made, if the goods are within the State:-

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

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

(b) where there is a single contract of sale of goods situated at more places than one the provision of clause(a) shall apply as if there were separate contracts in respect of the goods at each of such places;]

2[(II) "Sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum paid or payable for anything done by the dealer in respect of the goods at the time of or before delivery thereof other than the actual cost of outward freight or delivery or the cost of installation when such cost is separately charged;

1 Inserted vide Act No. IV of 2005

2 Inserted vide Act No. XX of 1981 w.e.f.1981

Explanation: --- In the case of sale of goods warehoused in bonded warehouses appointed or licensed, under the Central Excise and

salt Act 1954 or the Jammu and Kashmir Excise Act Samvat 1958, the sale price shall include the duties or payable under the aforesaid Acts in respect of such goods at the time of clearance of the goods from the bonded warehouses, whether such duties are paid or payable by or on behalf of the seller or by any person who clears the goods.

(m) "Tax" means the tax leviable under ¹[section 4 and Section 4-B] except for the purpose of sub-section (1) of section 4 includes as surcharge payable under section 4-A and tax recoverable under section 8-B;]

(mm) "Tax Recovery Officer" includes any authority not below the rank of Assessing Authority posted to the tax recovery circle for the purposes of section 16 of this Act;]

(mmm)"Tribunal" means the Appellate Tribunal constituted under section 12-A of this Act.]

(n) "Turnover" includes the aggregate of the amounts of sale and purchase and parts of sale and purchase made by any dealer whether as principal agent or in any other capacity, and

Explanation: -- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf

(1) Any cash or other discount on the price allowed in respect of any amount refunded in respect of articles returned by the customers shall not be included in the turnover;

(2) 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 but the purchase value of the goods liable to tax under section 4-B shall be included;]

1 Inserted vide Act No. XX of 1981 w.e.f.1981 & amended by Act No. IX of 1982 and shall always be deemed to have been inserted.

2 Inserted vide Act X of 1997 dated 15.5.1997.

3 Substituted except explanation vide Act No. XX of 1981 w.e.f.1.7.1981.

4 Clause (1) of explanation to sub clause (n) omitted & clause (2) and (3) renumbered vide J&K Taxation Laws Amendment Act, 2009 w.e.f. 20th March 2009.

5 Substituted vide Act No. XX of 1981 w.e.f.1.7.1981

(o) "Year" used in relation to any particular dealer means the year by reference to which, according to a declaration made by the dealer the accounts of that dealer are ordinarily maintained in his books and where no such declaration is made, the year commencing on the first day of April and ending on 31st March;

Provided that a dealer shall not change the year except with the previous permission of the assessing authority and except on such terms and conditions as may be determined by such authority.

3. Authorities Under This Act :-

(1) For carrying out the purposes of this Act the Government shall appoint one or more persons as the Commissioners under this Act and such other persons to assist him as it thinks fit in this behalf.]

2[(1A) x x x x x x x x x x]

(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) 7[] shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code, Svt.1989.

4. Liability To Tax Under This Act :-

(1) Subject to the provisions of this Act, every dealer, except the one dealing exclusively in goods declared tax free under section 5, shall pay for each year tax on his 3[taxable turnover] at a rate 4[not exceeding forty percent] of such turnover as may be determined by the Government and notified by the Government in the Government Gazette and such tax shall be charged on the sale of goods once only;

Provided that the rate of tax shall not exceed 5[four] per cent in respect of any goods referred to in section 14 of the Central Sales tax Act, 1956; 6[Provided also that the Commissioner may notify such of the dealers for advance tax who fail to file two quarterly returns consecutively within the period prescribed therefor]

1 Substituted vide Act No. VI of 1983 w.e.f.3.12.1982

2 Deleted vide Act No. XII of 2000 dated 14.11.2000

3 Substituted by Act No.XIII of 1978

4 Substituted by Act IX of 1982

5 Substituted by Act No. XI of 1975 for "three"

6 Inserted vide Act XIII of 2002 (S.5)

7 the words in brackets deleted vide Act No. VII of 2001 dated 12.4.2001.

1[Provided further that the 2[Commissioner] may, by a notification, levy advance tax on those dealers, who at any point of time remain in default for payment of tax for 3[six months] or more. Such tax shall be levied and collected at the entry point (s) of the State on

the purchase value at the rates at which normal sales tax is applicable, which shall be adjusted against 4{the arrears, if any, and the balance against any other liability of the assessee under the Act};]

[Provided also that if a defaulting dealer fails to pay such tax, the officer Incharge of the Checkpost shall order seizure of such goods. The goods so seized shall be released only on payment of advance tax leviable under this Act;

Provided further that at the time of seizure of goods, the affected person shall be served with a notice on a format to be prescribed by the Commissioner and if the affected person fails to respond to the notice or fails to pay the tax, sub section (11) of Section 15-A of the Act shall apply mutatis mutandis for recovery thereof.]

(2) In the case of a dealer who is an importer, the turnover relating to goods imported shall be the aggregate amount for which they were first sold in the state after their import into the State. The burden of proving that the sale was not the first sale made in the State after the import of the said goods into the state shall be on the dealer.

(3) In the case of any other dealer to whom sub-section (2) does not apply and whose turnover in any year is less than ten thousand rupees or such amount as may be notified by the Government in that behalf in respect of all dealers in any particular goods or in respect of a particular class or category of such dealers shall not be liable to pay tax that year under this section.

Provided that the tax shall not be payable on the sale involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this Act;

[Provided further that if at any time the turnover exceeds the limit specified or notified above, the dealer shall be liable to pay the tax in that year only in respect of the turnover which is in excess of the said limit.]

1 Proviso 3rd added vide Act No. X of 1997 dated 15.5.1997

2 Substituted and inserted vide Act No. XIII of 2002 (S.5)

3 The words "six months" substituted for the words "three years" and after third proviso, the provisos added vide Act No. VII of 2001 dated 12.4.2001.

4 Substituted and inserted vide Act No. IV of 2005

5 Proviso Added by Act XXIII of 1969.

(4) A dealer in relation to whom sub-section (3) applies and who has become liable to pay tax under this Act shall continue to be so

liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the amount so fixed and such further period after the date of such expiry as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease.

(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 limit specified in sub section (3).

(6) A dealer registered under the Central Sales Tax Act 1956 who is not liable to pay tax under this section shall nevertheless be liable to pay tax under this Act on any sale 1[or purchase] made by him inside the State: 2[Provided that nothing herein shall apply to a dealer-

(i) Who deals exclusively in the goods declared tax free under section 5;

(ii) Who deals in goods in respect of which tax is payable by another dealer at different point as specified by the Government under sub section (7).]

(7) Save as otherwise provided by or under this Act, the Government may, by notification in the Government gazette and subject to such conditions, if any, as may be specified therein, notify the point or points of sale 4[or purchase] at which any goods or class of goods may be taxed, and, on the issue of such notification, the points of purchase or sale in relation to any such goods or class of goods other than the point of purchase or sale so notified, shall be exempt from payment of tax under this Act;

Provided that, no such exemption shall be allowed unless where the point of sale in relation to any such goods or class of goods is prior to the point so notified, the registered dealer to whom the goods are sold certifies in the prescribed form that the goods purchased are intended for sale by him in the state.]

4A. Surcharge Tax :- Every dealer liable to pay tax under this Act shall also pay a surcharge equal to five per cent of the amount of tax payable by him and the provisions of this Act, in regard to assessment, payment and recovery of tax and all other matters including liability to pay interest connected therewith shall apply to the assessment, payment, recovery of such surcharge as if it were a tax leviable under this Act.

4B. Levy Of Purchase Tax :-

(1) Every dealer who is liable to pay tax under this Act and who--

1 Inserted vide Act No. XX of 1981 w.e.f. 1.7.1981.

2 Proviso inserted by Act No. XIII of 1978.

3 Sub Section (7) substituted by Act XX of 1981 dated 15.4.1981 w.e.f.1.10.1981.

4 The words "or purchase" inserted by Act No.X of 1984 w.e.f.1.5.1984.

5 Section 4-A inserted by Act No. XIV of 1974 & subsequently substituted by Act IX of 1982 w.e.f. 1.5.1982.

6 Inserted vide Act No. XX of 1981.

(a) Purchases taxable goods from any source in the State and uses them in the State in the manufacture of other goods; or

(b) Purchase taxable goods from any source in the State and uses them in the State in the manufacture of any other goods and disposes of the manufactured goods in any manner otherwise than by way of sale whether within the state or in the course of interstate trade or commerce or in the course of export out of the territory of the India within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act 1956: or

(c) Purchases taxable goods and exports them; in the circumstances in which no tax is payable under any other provision of this Act, shall be liable to pay tax on the purchase of such goods at the same rate at which it would have been leviable on the sale price of such goods under section 4. Such tax shall be charged and paid at such point as may be specified by the Government.

(2) Notwithstanding anything contained in this Act or the rules made thereunder, if the goods leviable to tax under this section are exported in the same condition in which they were purchased, the tax shall be levied, charged and paid before the goods leave the State and the tax so levied, charged and paid shall be provisional one and the same shall be adjustable towards the tax due from the dealer on such purchases as a result of assessment or re assessment made in accordance with the provisions of this Act and the rules made thereunder on the production of proof regarding the payment thereof in the State;

Provided that in the case of a dealer registered under this Act, provisional tax shall not be charged if the consignment under export through a transporter registered under section 15-B of this Act is accompanied by a declaration in prescribed form signed by the dealer and witnessed by the said transporter containing, interalia, a certificate that the purchase tax payable shall be paid in accordance with the provisions of section 7 and 8 of this Act.

Duplicate copy of the said declaration shall be submitted to the concerned assessing authority before the goods are despatched; Provided further that nothing contained in the preceding proviso shall apply to a registered dealer who has failed to file the returns due for any quarter or year prior to the commencement of the financial year in which goods are under export and who has failed to deposit the tax payable without any reasonable cause.]

(3) At any time, before the goods leave the State.---

(a) the officer -in-charge of the check post or notified area or any other officer not below the rank of Inspector as 1 Provisos added vide Act No. X of 1984 w.e.f.1.5.1984 may be authorized by the Commissioner, as the case may be at the point of exit from the State, or

(b) any other officer not below the rank of Inspector as may be authorized by the Commissioner at any other place shall determine the tax or any other amount due and direct the owner, driver or other person incharge of the goods to pay the amount of tax or any other amount due within such time and in such manner as may be prescribed.

(4) The officer directing the payment of tax under sub section (3) may, in the case of failure of the person concerned to pay the tax as directed, require him to furnish adequate security to his satisfaction in the prescribed manner to ensure the payment of tax due and in case such person fails to furnish the security the amount of tax shall, notwithstanding anything contained in section 8, immediately become payable and the provisions of sections 16 and 16-A shall apply to the recovery thereof.

Explanation:- In this section the words export means the taking out of goods from the State to any place outside it 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.]

(5) Notwithstanding anything contained in sub-section (1) the Government may by notification, direct that tax shall be charged on the purchase of any commodity at a point to be specified in the said notification provided that no tax shall be chargeable on the sale of such commodity made after the point of purchase at which tax is chargeable.

4C. Burden Of Proof :- The Burden of proving that any sale or purchase effected by a dealer is not liable to tax under this Act, shall be on the dealer.

5. Exemption From Tax :-

(1) The Government may, subject to such restrictions and conditions as may be prescribed, including conditions as to licence and licence fees, by order exempt in whole or in part from payment of tax any class of dealer or any goods or class or description of goods.

(2) Notwithstanding anything contained in sub-section (1) of section 4 of this Act, the Government may, subject to such conditions as it may

1. Added vide Act No. X of 1984 w.e.f.1.5.1984

2 Section 4-C inserted vide Act No. XX of 1981 and deemed to have come into force w.e.f.1.7.81

3 Inserted vide Act No. IX of 1982 w.e.f.1.5.1982

consider necessary by notification in the Government Gazette, direct that a class or classes of dealers manufacturing goods in the State shall be entitled to rebate in the tax payable on the sale of such manufactured goods equal to the amount of tax paid by them on the raw-material actually used in manufacture of such goods.]

5A. Composition Of Tax Payable :- Notwithstanding anything contained in section 4 and 5, the Commissioner may, in such circumstance, under such conditions and for such period as may be prescribed, permit 2[any class of assesseees] to pay in lieu of the amount of tax payable by him under the provisions of this Act, a lump sum determined in the prescribed manner at prescribed rate by way of composition and the sum so compounded shall be payable by the assessee.]

Provided that the provisions of this Act and the rules made thereunder relating to the filing of returns and the maintenance of accounts by such assesseees shall not apply to them.

5B. Liability To Tax Of Persons Not Observing Conditions Of Exemption Or Licence :- If any restriction or conditions prescribed under section 5 is not complied with by a dealer, the sale or purchase as the case may be, of the dealer may, with effect from the commencement of the year in which such non-compliance was made be assessed to tax under section 4 or section 4-B and the licence fee if, any, recovered from such dealer, shall be adjusted towards the tax so assessed.

6. Registration Of Dealer :-

(1) No dealer shall, while being liable to pay tax under section 4, carry on business as a dealer unless he has been registered in accordance with the provisions of this Act; Provided that any dealer who at the commencement of this Act is liable to be registered under this Act may apply for registration within three months from the date of commencement of this Act;

Provided further that a department of the Government of India or a department of the Government carrying on business as a dealer, may, if the Government so directs, be exempted from registration subject to such conditions as may be prescribed in this behalf.]

(2) Every dealer required by sub-section (1) to be registered shall make an application in this behalf in the prescribed manner to the assessing authority.

(3) If the said authority is satisfied that an application for registration is in order he shall register the applicant and grant him a certificate of registration in the prescribed manner on payment of the prescribed fee.

1 Substituted by Act No.XX of 1981.

2 Substituted by Act XIII of 1978

3 Inserted ibid

4 Section 5-B inserted vide Act No. XX of 1981 and deemed to have come into force w.e.f.1.7.1981

5 Proviso added vide Act XVIII of 1976

(4) The assessing authority may, for reasons to be recorded amend, renew or cancel any certificate of registration after giving the applicant a reasonable opportunity of being heard.

6A. Provisional Registration :-

(1) Any person who intends to establish a business in the state for the purpose of manufacturing or producing goods of a value exceeding fifteen thousand rupees per year 2[and has the approval of competent authority to establish such business] may, notwithstanding that he is not required to register himself under section 6, apply in the prescribed manner to the assessing authority for provisional registration under this Act.

(2) If the assessing authority after making such inquiries as it may consider necessary, is satisfied as to the bona fide intention of the person making the application, it may grant a provisional certificate of registration to such person furnishing such security as it may

consider necessary and shall specify in such certificate the class or classes of goods as being intended for use as raw material, processing material, machinery, plants, equipment, tools, spare parts, accessories, fuel and lubricants directly in the manufacture of goods for sale.

(3) Every person who has been granted a provisional certificate of registration under this section shall for so long as such certificate remains in force be liable to pay tax under this Act.

(4) A provisional certificate of registration granted under this section shall remain in force for such period as may be specified therein and the provision of sub-section 3[(3) and (4) of section 6] shall, so far as may be, apply to any such certificate of registration: Provided that if a person to whom such certificate of registration has been granted is prevented by sufficient cause from manufacturing and selling goods before the expiry of the said period the Assessing Authority shall on an application made in this behalf, extend the period of the enforcement of such certificate.]

(5) If a person who has been granted a provisional certificate of registration under this section fails to start selling goods manufactured by him within the period specified in the certificate, he shall, if he has purchased raw-materials, processing materials, machinery, plants, equipments, tools, spare parts, accessories, fuels and lubricants, be liable to pay as penalty equivalent to 10% of the landed cost of the goods so purchased without prejudice to the liability of the sales tax on the sale of these goods when it actually takes place.

1 Section 6-A inserted vide Act XVI of 1970

2 substituted by Act XVIII of 1988

3 Inserted by Act XIII of 1978

4 Added vide Act No. IX of 1982 dated 1.5.1982

6B. Issue Of Permits :-

(1) Every registered dealer who also transacts business at any place other than his registered place or employs a travelling salesman or representative to transact business as aforesaid shall obtain a permit issued under this Act authorizing him or, as the case may be, the travelling salesman or representative so to do.

(2) The entire turnover of business carried on under the permit shall be included and accounted for by the registered dealer in his account and returns and shall be dealt with as if it were the turnover of business done by the registered dealer himself at the

registered place of business.

(3) Every permit holder shall carry the permit on his person and shall produce it on demand by any officer of the Sales Tax Department empowered by the Government in this behalf .He shall maintain and produce on demand to any such officer a true and correct account of all the transactions carried on under the permit and also a stock book showing the quantities of goods entrusted to him by the registered dealer, the quantities disposed of from day to day by sale or otherwise and balance in hand at the end of each day.

(4) An application for permit referred to in sub-section (1) shall be made to such authority in such manner and within such period as may be prescribed and shall be accompanied by such fee, not exceeding five rupees, as may be prescribed.

Explanation--- A separate application with separate fee shall be necessary for the registered dealer and for each travelling salesman or representative dealer.

(5) If the prescribed authority is satisfied that the application is in order it shall issue the permit in the prescribed form.

(6) A permit issued under sub-section (5) shall be valid for one year and shall be renewed from year to year on receipt of an application from the registered dealer accompanied by such fee not exceeding five rupees, as may be prescribed.

(7) If the prescribed authority is satisfied that the permit issued under sub-section (5) is lost or accidentally destroyed, it shall on 1 Section 6-B added by Act XXV of 1972 application by the registered dealer accompanied by a fee of one rupee, issue to him a duplicate of the permit.

(8) The prescribed authority shall cancel a permit---

(a) on requisition made, in writing by the registered dealer; and

(b) on the cancellation of the certificate of registration.

(9) The prescribed authority may cancel a permit if the permit holder has contravened any of the provisions of this Act or the rules made thereunder.

(10) No application for a permit or for a duplicate thereof shall be refused and no permit shall be refused and no permit shall be cancelled under clause (b) of sub-section (8) and sub-section (9) unless the registered dealer has been given a reasonable opportunity of being heard.

6C. Furnishing Of Security For The Payment Of Tax Etc. By A

Dealer :-

(1) The Commissioner or any officer not below the rank of Deputy Sales Tax Commissioner authorized by him in writing in this behalf if it appears to him to be necessary so to do, for proper realization of the tax, penalty, interest or any other sum levied under this Act, may impose, for reasons to be recorded in writing, as a condition for issue of a certificate for registration or renewal thereof, a requirement that the dealer shall give security or additional security of an amount in the manner prescribed by the rules for the payment of the aforesaid amount for which he may be or become liable under this Act.]

(2) Where it appears necessary to the authority so to do for proper realization of tax payable under this Act, he may, at any time while certificate of registration is in force, by an order in writing and for reasons to be recorded therein, require the dealer to whom the certificate has been granted to furnish within such time as may be specified in the order such security, or if the dealer has already furnished any security under subsection (1) such additional security as may be specified in the order. Provided further that the security or additional security shall be refundable in the following manner when reasons for its demand no longer exist:-

a) if the security has been remitted by cash into the treasury it shall be refundable in the same manner as prescribed for refund of tax or penalty under section 10 of this Act: or

1 Sub section 6-C inserted by Act XIII of 1978

2 Sub section 2 added & re numbered and its proviso added vide Act No. XVIII of 1988 dt.31.8.88

b) if the security is in any other prescribed mode, the competent authority under sub-section (1) shall order its release.

(3) The authority granting the certificate of registration may by order and for good and sufficient reasons forfeit the whole or any part of the security furnished by a dealer for realizing any amount of tax, penalty, interest or any other sum payable under this Act. Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard]

7. Return Assessment And Re-Assessment :-

(1) 2[Every dealer liable to pay tax under this Act] shall furnish in the prescribed form a return of his turn-over for a year within one hundred and twenty days from the expiry of that year.

(2) Without prejudice to the provisions of sub-section (1), every 3[]dealer as afore-said shall also furnish in the prescribed form quarterly returns for each quarter of the year within thirty days from the expiry of that quarter. Every such return shall be accompanied by a Treasury Receipt or any other proof of having paid the tax due on that return.

(3) Every dealer, other than a registered dealer, who may be required so to do by the Assessing Authority by notice served in the prescribed manner, shall furnish such returns by such dates as may be fixed by the said Authority [; 4["Provided that the Commissioner may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or permit any such dealer-

(a) to furnish them for such different periods; or

(b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the state for said period or for such different periods and to such authority, as he may direct.".]

(4) If any dealer discovers any omission or other error in any return furnished by him he may furnish a revised return at any time before the date prescribed for the furnishing of the next 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 treasury receipt or any other proof of payment of such extra tax, if any, payable].

(5) If the Assessing Authority is satisfied that a dealer has for a reasonable cause been unable to furnish any return within the prescribed period the said Authority may extend the period for submission of such return.

(6) If the Assessing Authority is satisfied that the return submitted under sub-section (1) or sub-section (3) is correct and complete, he shall 6[] assess the amount of tax due from the dealer on the basis of such return.

(7) If the Assessing Authority is not satisfied that 7[the annual return furnished under sub-section (1) and sub-section (3)] is correct and

1 Section 7 substituted by Act XVIII of 1976

2 Substituted by Act XIII of 1978

3 Deleted by Act XIII of 1988.

4 Proviso to sub section (3) to section 7 inserted vide J&K Taxation Laws Amendment Act, 2009

5 Substituted vide Act No. XVIII of 1988 dated 31.8.1988

6 Deleted by Act XIII of 1988.

7 Substituted vide Act No. XVIII of 1988 dated 31.8.1988 complete, he shall serve on the dealer a notice in the prescribed form requiring him on a date and at a place specified therein either to attend in person or to produce or cause to be produced any evidence on which such dealer may rely in support of such return.

(8) On the day specified in the notice or as soon after wards as may be, the Assessing Authority shall 1[] after recording such evidence as the dealer may produce and such other evidence as the Assessing Authority may require on specified point, assess the amount of tax due from the dealer.

(9) If a dealer fails to comply with the term of a notice issued under sub-section (7) the Assessing Authority shall proceed to assess to the 1[] best of his judgement, the amount of tax, if any, due from the dealer.

(10) If no return is submitted by the dealer under sub-section (1) or sub-section (3) before the date prescribed or specified in that behalf, the Assessing Authority shall 1[] proceed to assess to the best of his judgement, the amount of tax, if any, due from the dealer.

(11) (a) If the Assessing Authority has reasons to believe that by reasons of omission or failure on the part of a dealer to make a return under sub-section (1) or sub-section (3) for any year, to the Assessing Authority or to disclose fully and truly all material facts necessary for his assessment for that year, the turnover chargeable to tax has escaped assessment 2[or has been assessed at lower rate] for that year in whole or in part ; or

(b) If there has been no omission or failure as mentioned under clause (a) on the part of the dealer, the Assessing Authority has in consequence of information in his possession or otherwise reasons to believe that the turnover chargeable to tax has escaped assessment 2[or has been assessed at a lower rate] for any year in whole or in part; The Assessing Authority may subject to the provisions of subsections (12) and (13) assess or re-assess the dealer to tax in whole or in part, as the case may be, on such turnover.

(12) Before making the assessment or re-assessment under subsection (11), the Assessing Authority shall 3[] serve on the dealer a notice in the prescribed form 4[containing grounds for such proceeding].

1 Deleted by Act XIII of 1978.

2 Inserted *ibid*.

3 Deleted *ibid*

4 Substituted by Act No.XVIII of 1988.

(13) No notice under 1[] sub-section (12) shall be issued if eight years have elapsed from the end of that year to which it relates.

2[(14) (a) No order of assessment under sub-sections (6), (8), (9) and (10) of this section shall be made after the expiry of four years from the end of the 3(year) or after expiry of one year from the end of the year in which the return or revised return under sub-section (1), (3) or (4) of this section is filed, whichever is later;

(b) no order of assessment or re-assessment under sub-section (11) of this section shall be made after the expiry of eight years from the end of the year or one year from the end of the year in which the notice is served, whichever is later;

(15) Notwithstanding anything contained in sub-section (14) of this section an order of fresh assessment in pursuance of an order under section 11, 11-A or 12, or an order of Court may be made before the expiry of 2 years from the end of the financial year in which such order is passed.

(16) Where the assessment or re-assessment proceedings are stayed under the order of any Court or other competent authority for any period, such period shall be excluded in computing the period of limitation for such assessment or re-assessment specified in sub-section (14), (15) or any other provisions of this Act.]

(17) A certified copy of order of assessment /re-assessment determining the taxable turnover assessed shall be issued to the assessee along with the notice of demand.]

(18) (a) Notwithstanding anything contained in this section the Assessing Authority may make a provisional assessment and demand tax payable on the basis of such assessment in respect of any quarter (s) in the following circumstances:--

(i) When a dealer fails to furnish a quarterly return and the quarterly tax cannot be determined in accordance with sub section (5) of section 8 of this Act; or

(ii) when a dealer discontinues business during the currency of accounting year itself; or

1 Omitted by Act No. XX of 1981

2. Sub section (14) to (16) inserted vide Act XIII of 1978.

3. substituted a ibid

4 Sub section 17 added by Act XX of 1981 w.e.f.1.7.1981

5 Sub section 18 added by Act XVIII of 1988 dated 31.8.1988.

(iii) When the assessing authority has reasons to believe that the delay in making assessment shall be prejudicial to the interests of revenue.

(b) The provisions of this Act relating to recovery, interest, penalty etc. shall mutatis mutandis, apply to the provisional assessment made under clause (a).

(19) Notwithstanding anything to the contrary containing in this section, the Government may prescribe a scheme of deemed assessment, subject to such restrictions and conditions as it may impose, in respect of dealers whose assessments, are pending for any period upto 31st March 2005".

8. Payment And Recovery Of Tax :-

(1) The tax assessed or any other amount demanded under this Act shall be paid in such manner and within such time not being less than fifteen days from the date of the notice of demand as may be specified in the notice .In default of such payment the whole of the amount then remaining due shall become recoverable in accordance with 3[sections 16 and 16-A.]

[Provided that the 5[] Commissioner or any other officer not below the rank of assessing authority, authorized in writing by the Commissioner, may on an application in the prescribed form extend, the date of payment specified in the notice of demand or allow him to pay demand in instalments subject to such conditions including the payment of interest under sub section (2) and furnishing of a security, as the officer may consider necessary.]

(2) If the tax or any other amount due under this Act 7[excluding interest] is not paid by the dealer or any other person, by whom it is payable within the period 7[allowed], the dealer or such other person shall be liable to pay interest on the tax or other amount from the date it was payable to the date of actual payment 8[at the rate of 2 per cent per month]

Provided that where as a result of an order under sections 11,11-A, 12, 24 or an order of the court the amount of tax or other sum on which interest was payable under this sub section has been reduced the interest shall be reduced accordingly and excess interest paid, if any, shall be refunded.]

(3) Quarterly tax shall be paid before furnishing a quarterly return but not later than the date prescribed under sub section (2) of section 7.]

1. Inserted vide Act No. XIII of 2007

2 Section 8 Substituted vide Act XVIII of 1969

3 Substituted vide Act No. XIII of 1978

4 Substituted vide Act No. XIII of 1978

- 5 The words "Appellate Tribunal or" inserted vide Act No. XIII of 2000 dt 4.1.2000 & subsequently deleted vide Act No. VII of 2001 dated 12.4.2001
- 6 Substituted *ibid*.
- 7 The words "excluding interest" inserted and "allowed" substituted vide Act No. X of 1984
- 8 The words "at the rate of 2 percent per month" substituted vide Act No. IX of 2005 and clause (a) and (b) deleted.
- 9 In sub-section (2) of section 8 proviso substituted vide Act No. XI of 1999 dated 11.5.1999
- 10 Substituted vide Act XX of 1981
- (4) Notwithstanding anything contained in sub section (3) if the Assessing Authority extends the date for furnishing quarterly return under sub section (5) of section 7, an amount equal to the amount of quarterly tax payable or paid for the immediately preceding quarter shall be paid before the prescribed date in lieu of quarterly tax; Provided that a dealer who was not previously liable to pay any quarterly tax shall make an estimate of the tax payable for the quarter and deposit the same before the prescribed date.
- (5) Where any dealer fails to furnish any quarterly return and fails to pay the tax in accordance with sub section (4) an amount equal to the amount of tax payable or paid for the immediately preceding quarter shall become payable towards the tax payable for the said quarter.
- (6) The tax paid under sub section (4) and (5) shall be treated to be quarterly tax payable under sub section (3) and shall be adjusted towards the tax payable for the quarter in respect of which it is paid; Provided that the difference between the tax payable on the basis of quarterly return and the tax paid under the aforesaid sub sections shall be paid before the date to which the period of furnishing the return has been extended or date of furnishing the return, whichever is earlier. Provided further if the amount already paid is in excess of the quarterly tax payable, the excess thereof shall be refunded, and if the assessee so desires, the said amount of refund shall be treated to have been paid towards the tax payable for the next following quarter and the assessee shall be entitled to interest on the amount of such refund in accordance with the provisions of sections 10-B of the Act.
- (7) Where a dealer furnishes a revised return under sub section (4) of section 7 and the tax payable is more than the tax paid on the basis of original return he shall pay the extra tax payable before furnishing the revised returns.

Provided that if the tax already paid is in excess of the tax payable, such excess amount shall be treated to have been paid towards the tax payable for the quarter next following the date of furnishing such revised return.

(8) Notwithstanding anything contained in this Act, but subject to the provisions of sub section (5) of section 16-C of this Act, if a dealer fails 1 Sub section (8) and its explanations substituted vide Act XVIII of 1988 dated 31.8.1988. to pay the quarterly tax under this section he shall be liable to pay interest on the tax from the date it was payable to the date of actual payment at the rates prescribed in sub section (2) of this section and the provisions of section 16 and section 16-A shall apply mutatis mutandis to the recovery thereof.

Explanation 1 Quarterly tax means the tax payable on the basis of a quarterly return required to be furnished under sub section (2) of section 7 or the tax determined for a quarter.

Explanation 2 Interest under sub section (2) of this section on the extra tax payable on the basis of revised return, shall be payable from the date next following the date on which the tax was payable on the basis of original return.

Explanation 3 For purposes of sub section (2) and sub section (8) of this section interest payable for part of the month shall be proportionately determined according to the number of days of default.]

8A. Section 8A :-

8B. Realization Of Amount By Way Of Tax :-

(1) No person other than a dealer registered under section 6 shall realize any amount by way of tax under the provisions of this Act.

(2) The amount realized by any such dealer by way of tax shall, notwithstanding anything contained in any other provisions of this Act, be deposited by him in a Government Treasury or in the office of the Deputy Sales tax Commissioner within one month of its realization.]

(3) The amount realized by any registered dealer by way of tax in excess of the tax that is payable under this Act shall, notwithstanding anything contained in any other provisions of this Act, be deposited with the Government within the time specified in sub section (2) of section 7 of this Act.

8C. Special Provision In The Interest Of Industrial Development :-

Notwithstanding anything to the contrary contained in sections 7 and 8, the Government may, if satisfied that it is necessary and expedient so to do in the interest of industrial development of the State, defer the payment of admitted or assessed tax by such class of industries on the sale of their finished products for such period and subject to such conditions as may be prescribed.

1 Section 8-A deleted vide Act XIII of 1978

2 Section 8-B inserted vide Act No. XVIII of 1976

3 Added by Act No. XIII of 1978

4 Inserted vide Act No. III of 1992

9. Tax Of Deceased Persons Payable By Representatives :-

(1) Where a dealer dies, his executor, administrator or legal representative shall be liable to pay out of the estate of the deceased dealer, to the extent to which the estate is capable of meeting the charge, the tax assessed as payable by such person or any penalty which would have been payable by him under this Act, if he had not died.

(2) Where a dealer dies before the service upon him of the notice, if any, issued in pursuance of section 7, his executor, administrator or legal representative shall on the serving of the notice aforesaid, comply therewith and the assessing authority may proceed to assess the turnover of the deceased dealer as if such executor, administrator or legal representative were the assessee.

(3) Where a dealer dies without furnishing a return which is required to be furnished under the provisions of section 7 or after having furnished a return which the assessing authority has reason to believe to be incorrect or incomplete, the assessing authority may determine the turnover of such dealer and assess the tax payable by him on the basis of such determination, and for this purpose may, by notice require from the executor, administrator or legal representative of the deceased dealer any account, documents or other evidence which he might under the provisions of this Act have required from the deceased dealer.

(4) The provisions of sub section (1) to (3) shall mutatis mutandis apply to partnership firm where one or more partners have died.

(5) The provisions relating to appeal and revision under sections 11, 11-A and 12 shall be applicable to assessment under this section as if the executor, administrator or the legal representatives aforesaid were himself a dealer.

10. Refunds :-

The Assessing Authority shall, refund in the prescribed manner any sum paid in excess of the amount of tax or penalty due under this Act;] 2[Provided that if excess amount of tax paid has been realized by the dealer from any other person, it shall be refundable only to that person.]

1 Section 10 substituted by Act XVIII of 1976

2 Substituted by Act XIII of 1978

3 Section 10-A, 10-B inserted ibid

10A. Power To Withhold Refund In Certain Cases :- Where an order giving rise to refund is the subject matter of revision or other proceeding or any other proceeding under this Act is pending and the assessing authority is of the opinion that the grant of refund is likely to adversely affect revenue, he may with the previous approval of the Commissioner withhold the refund till such time as the Commissioner may determine.

10B. Interest On 1[] Refunds :-

(1) Where the refund is due to the dealer or any other person on account of tax or penalty found to have been paid in excess in pursuance of an order under section 11 Section 11-A or 12 the Government shall pay to such a dealer/person simple interest at 2(18%) per annum on the amount of such refund from the date such amount was paid to the date on which refund is granted;] Provided where the amount found to be in excess was paid in instalments such interest shall be payable on the amount of such instalment which was in excess from the date on which such instalment was paid to the date on which the refund is granted. Provided further that interest for the period commencing from the date of the order under section 11, 3[section 11-A] or section 12 giving rise to the refund shall be paid at the rate of 24% per annum 4[.]

(2) Where the refund is withheld under the provisions of section 10- A, the Government shall pay simple interest at the rate of 18% per annum on the amount of refund ultimately determined to be due as a result of appeal of further proceeding; Provided that interest for the period commencing from the date on which the time determined by the Commissioner under section 10-A expires shall be paid at the rate of 24% per annum 4[.]

Explanation I - Interest for a part of the month shall be allowed

proportionately.

Explanation II - In case the payment of tax has been made by a cheque or draft or in any other mode otherwise than in cash, the date of payment will be the date on which such cheque, draft, etc. was actually encashed.

1 Deleted by Act X of 1984

2 substituted by Act XVIII of 1988

3 In section 10-B after words Section 11, Section 11-A inserted vide Act No.VII of 2001 dt 12.4.01

4 Deleted by Act No. IV of 2005

5 Explanation 1 substituted vide Act XVIII of 1988 w.e.f.31.8.1988

11. Appeals :-

(1) A dealer or any other assessee aggrieved by any order passed by the Assessing Authority or any other officer authorized by the Commissioner under section 15 or 15-A, other than Deputy Commissioner, may within 30 days from the date on which he is served with the notice of demand or in case where notice of demand is not required within 30 days from the service of the order, appeal to the Appellate Authority or if the order is made by the Deputy Commissioner to the Commissioner;

Provided that the Appellate Authority may admit an appeal after the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period; Provided further that no appeal shall be entertained by the said authority unless it is satisfied that :-

a) where all the returns for a year have been filed, the amount of tax due under this Act on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any proceedings under this Act, whichever is higher, has been paid; or

b) where some of the returns for a year have not been filed or no return has been filed for such year, the amount of tax due under this Act, admitted by the appellant in the returns, if any, filed by him or at any stage in any proceedings under this Act or 20% of the amount of tax assessed, whichever is higher, has been paid; or

c) in case the appeal is against the imposition of penalty, 2[5%] of the penalty levied has been paid;

Provided that the Appellate Authority may, for reasons to be recorded in writing, stay the recovery of the 4[demand disputed in

appeal]. However, the stay will not cover the amount of tax and penalty payable under clauses (a), (b) and (c) of the second proviso.]

Explanation :- Nothing in this sub-section shall apply to the cases where the Commissioner in exercise of the powers vested under Section 8 makes an order extending the date of payment.]

(2) The appellate authority 6[or the Commissioner, as the case may be], may after giving the appellant reasonable opportunity of being heard:

(a) Confirm, reduce, enhance or annul the assessment or penalty or
(b) set aside the order and direct the assessing authority to pass a fresh order after such further enquiry as may be directed.

1 Sub-section (1) of section 11 substituted firstly vide Act No.XX of 1981, Act No.X of 1997 dt.15.5.1997 & again substituted Subsequently vide Act No. III of 1998 dated 6.5.1998 and then again substituted except provisos vide Act No. IV of 2005 and the provisos and explanation inserted vide Act No. XIII of 2000

2 figures "50%" substituted with figure "5" vide Act No. IV of 2005

3 Proviso added vide Act No. VII of 2001 dated 12.04.2001.

4 substituted vide Act No. IX of 2005

5 Explanation substituted vide Act XVI of 2001 dated 12.4.2001.

6 Substituted vide Act No. IV of 2005

(3) if the amount of assessment or penalty is reduced by the appellate authority 1[or the Commissioner, as the case may be]under clause (a) of sub section (2) he shall order the excess amount of tax or penalty if realized to be refunded.

(4) Every order passed in appeal under this section shall subject to any order passed in revision under section 11-A or 12 be final.

11A. Appeals :-

(1) Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by an order passed under section 11 3[] may within three months from the date of such order prefer an appeal to the Tribunal.

(2) The Tribunal may, after calling for and examining the relevant records and giving the parties reasonable opportunity of being heard,

a) confirm, cancel, or pass any other order which it may deem fit or
b) set aside such order with a direction to pass fresh order after such enquiry as it may direct.]

(3) During the pendency of an appeal, the Tribunal may, for reasons to be recorded in writing stay the recovery of the disputed

amount of tax and penalty.

12. Revision :-

(1) The Commissioner may, on his own motion call for the records of any proceedings which are pending before, or have been disposed of by appellate or any other authority appointed under section 3 to assist the Commissioner, for the purpose of satisfying himself as to the correctness, 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 all cases/proceedings, on applications made by the assesseees/dealers under this section and pending on the date of commencement of the Jammu and Kashmir General Sales Tax (Amendment) Act, 2000 before the Commissioner, shall stand transferred to the Appellate Tribunal for disposal as if these applications were made before the Tribunal.

(2) No order shall be made under this section which adversely affects the rights of a dealer without giving him a reasonable opportunity of being heard. 1[(3) x x x x x x x x]

1 Substituted vide Act No. IV of 2005

2 Section 11-A inserted vide Act No. III of 1998 dated 6.5.1998

3 Deleted vide Act No. XIII of 2000

4 Sub section (3) substituted vide Act No. VII of 2001 dated 12.04.2001

5 Section 12 Amended vide Act No. III of 1998 dated 6.5.1998 and again vide Act XIII of 2000 wef 15.11.2000.

12A. Composition And Functions Of The Tribunal :-

(1) The Government shall as soon as may be, constitute an Appellate Tribunal consisting of one or more members as it thinks fit to exercise the powers and discharge the functions conferred by or under this Act : Provided that where the Tribunal consists of one member that member shall be a person who has held a judicial post for at least ten years and is a member of the Jammu and Kashmir Higher Judicial Service and where the Tribunal consists of more than one member, one such member shall be a person who has held the post of Deputy Commissioner, Sales Tax or any higher post in the Sales Tax Department and is holding a pay scale not below the pay scale of selection scale of Kashmir Administrative Service at the time of such appointment.

(2) Where the number of members of the Tribunal is more than

one, judicial member shall be the Chairman of the Tribunal.

(3) Any vacancy in the membership of the Tribunal shall be filled up by the Government as soon as practicable.

(4) Where the number of members of the Tribunal is more than one and if the members differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, the decision of the Chairman of the Tribunal thereon shall be final.

1 Omitted vide Act No. III of 1998

2 Section 12-A was originally inserted vide Act No. XX of 1981 and subsequently substituted vide Act No. X of 1997 dated 15.5.1997 and the existing provisos to the sub section (1) substituted for the prior proviso vide Act No. III of 1998 dated 6.5.1998.

(5) Subject to the previous sanction of the Government, the Tribunal shall, for the purpose of regulating its procedure and disposal of its business, make regulations consistent with the provisions of this Act and the rules made thereunder.

(6) The regulations made under sub section (5) shall be published in the Government Gazette.

12B. Application Of Limitation Act :- The provisions of sections 5 and 12 of the Limitation Act, Samvat 1995, shall apply to the appeals, revisions, filed under this Act before the Appellate, Reviewing Authorities or the Tribunals.

12C. Power Of The Tribunal :-

(1) In discharging the functions under this Act, the Tribunal shall have all the powers of a civil court for the purposes of -

- a) proof of facts by affidavit ;
- b) summoning and enforcing attendance of any person and examining him on oath or affirmation ;
- c) compelling the production of documents ; and
- d) issuing commissions for the examination of witnesses.

(2) In the case of any affidavit to be made for the purpose of this Act, any officer appointed by the Tribunal may administer the oath to the deponent.

(3) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summon is issued by the Tribunal either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and

time, intentionally omits to attend or fails to produce the documents at the place and time, the Tribunal, may impose on him such fine not exceeding five thousand rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in this Act, for recovery of arrears of tax ;

Provided that before imposing any such fine, the person concerned shall be given a reasonable opportunity of being heard.

(4) If any documents are produced by a person on whom a summon was issued by the Tribunal and the Tribunal has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him and the documents produced are necessary for establishing the case against such dealer, it may for reasons to be recorded in writing, impound the documents and shall grant a receipt for the same and shall retain the same for so long as may be necessary in connection with the proceedings under this Act.

1 Section 12-B, 12-C and 12-D inserted vide Act No. X of 1997 dated 6.5.1997.

12D. Statement Of Case To The High Court :-

(1) Within sixty days from the date of communication of the order of the Tribunal, passed in appeal being an order which affects the liability of any person to pay tax or penalty or interest or to forfeiture of any sum or which effects the recovery from any person of any amount under section 12-A that person or the Commissioner, Sales Tax having jurisdiction over the whole of the State may by application in writing (accompanied where the application is made by that person by a fee of five hundred rupees) require the Tribunal to refer to the High Court any question of law arising out of such order and where the Tribunal agrees, it shall as soon as may be not later than ninety days from the receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that the Tribunal may, if it is satisfied that the dealer or the Commissioner was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days: Provided further that, if in exercise of its power under this subsection, the Tribunal refuses to state the case which it has been required to do, on the ground that no question of law arises that person or the Commissioner may within ninety days of such refusal,

either withdraw his application and if he does so any fee paid shall be refunded, or apply to the High court against such refusal.

(2) If upon receipt of an application under sub section (1) the High Court is not satisfied as to the correctness of the decision of the Tribunal, it may require the Tribunal to state the case and refer it, and accordingly on receipt of any such requisition the Tribunal shall state the case and refer to the High Court.

(3) If the High Court is not satisfied that the statements in the 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 High Court may direct in that behalf.

(4) 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.

1 Section 12-D inserted vide Act No. X of 1997 dated 6.5.1997.

Explanation - For the purpose of this sub section, certified copy of the judgement of the High Court submitted by the Commissioner to the Tribunal shall be deemed to be the copy of the judgement of the High Court delivered to the Tribunal under the seal of the court and the signature of the Registrar.

(5) The payment of the amount of tax, penalty, interest or sum forfeited, if any, 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, penalty, interest or sum forfeited paid shall be refunded in accordance with the provisions of section 10-B.

13. Power To Withdraw And Transfer Cases :-

(1) The Commissioner may withdraw any case pending at any stage before any authority under his control and by a written order refer it for disposal to any other authority of the ²[same or higher rank] and the authority to whom a case has been so referred shall have the same powers to deal with it as if it were a case within his jurisdiction.

(2) Subject to the provisions of sub section (1) the Commissioner may transfer any case pending before him to any other officer as the Government may by notification in the Government Gazette appoint in this behalf and the said officer shall have the same powers to deal with the case as are vested in the Commissioner under this Act.]

(3) The transfer of any case under sub section (1) or sub section (2) shall not render necessary the issue of any fresh notice if already issued by the assessing authority or the Commissioner, as the case may be, from whom the case is transferred.

Explanation--In this section the word "case" in relation to any person whose name is specified in any order means all proceedings under this Act in respect of any year, which may be pending on the date of such order or which may be completed on or before such date and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year.

14. Accounts To Be Maintained By Dealers :-

(1) Every dealer liable to tax under this Act shall subject to such conditions as may be prescribed, maintain books of accounts including purchase and sale records.

(2) The account books prescribed under sub section (1) shall be preserved by the dealer for a period of nine years from the last date of the expiry of the year.

(3) If the account books prescribed under sub section (1) are not available or the method of accounting adopted is not regular or is such that true and correct turnover cannot be determined therefrom the Assessing Authority shall determine it according to best of his judgement.

1 Deleted and substituted by Act XXV of 1972.

2 Substituted by Act XVIII of 1988.

3 Inserted by Act XIII of 1978

4 Substituted by Act No. XIII of 1978

15. Power To Order Production Of Accounts And Power Of Entry And Inspection :-

(1) The Commissioner or the 1[appellate authority or any other authority not below the rank of] the assessing authority may require any dealer to produce before him any accounts, registers or other documents or to furnish any information, relating to the stock of goods, purchases, sales or deliveries of goods by the dealer or relating to any other matter as may be deemed necessary for the

purposes of this Act.

(2) All accounts, registers and documents relating to the stock of goods purchases, sales and deliveries of goods by any dealer and all goods kept in any place of business of any dealer shall at all reasonable times be open to inspection by the authorities specified in sub section.(1)

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, and that anything necessary for purposes of investigation into his liability may be found in any accounts, registers or documents he may for reasons to be recorded in writing by a written order, authorize any officer not below the rank of Inspector of the Sales Tax Department to seize such accounts, registers or documents as may be necessary. Upon such seizure an inventory of such account books, registers and other documents seized shall be prepared and a copy thereof shall be furnished to the dealer before their removal from the place where they are seized. He shall retain the same only for so long, as may be necessary for examination thereof and for prosecution.

(4) For the purpose of 2[sub section (3) or sub section (5)] the officer authorized in this behalf may enter and search in the prescribed manner any place of business of any dealer or any other place where he has upon information received reasons to believe that the dealer keeps or is for the time being keeping any accounts registers or documents in respect of his business.

(5) If the Commissioner or any officer not below the rank of assessing authority authorized under subsection (3), during the course of inspection of any office, shop, godowns, vehicle or any other place of business, or any building or place of the dealer or any other person or at any other place, finds any goods which are not accounted for by the dealer or such other person in his account books, maintained in the ordinary course of business, the Commissioner or the authorized officer, shall have the power to seize such goods and levy a penalty which shall be equal to the double the amount of tax payable on such goods deeming the invoice value or market value thereof, whichever is higher as sale price.

Provided that before levy of penalty the affected person shall be given an opportunity of not less than 7 days, unless there are reasons to be recorded in writing for giving a shorter notice to prove to the satisfaction of the Commissioner or the authorized officer that the goods are properly and fully accounted for in the

said account books. A certified copy of the order of penalty or withdrawal of the order of seizure of goods as the case may be shall be issued to the said person.

Provided further that in case penalty is levied the goods for the value equal to the amount of penalty shall not be released unless the amount of penalty is paid or a security in prescribed form furnished.]

1 inserted by Act No. X of 1984

2 inserted by Act No. XX of 1981

15A. Establishment Of Checkposts And Inspection Of Goods In Transit :-

(1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State it is necessary so to do, they may by notification in the Government gazette, direct the setting up of check posts at such place or places and notify the area of the Check Posts, (hereafter referred to as the notified area), and erect barriers where necessary for the purpose of regulating the passage of goods across such notified area.

(2) No person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value as may be prescribed, by any vehicle or any other mode of conveyance, unless he is in possession of -

(a) either a bill of sale or delivery note or declaration or certificate of ownership containing such particulars as may be prescribed; and
1 sub section 5 substituted by Act No. XX of 1981.

2 2nd proviso to sub section (5) of the section 15 substituted vide Act No. X of 1984 w.e.f.1.5.1984

3 Section 15-A, 15-B and 15-C inserted by Act XXIII of 1969.

4 Substituted by Act No. XIII of 1978

(b) a way bill in such form and containing such particulars as may be prescribed.]

Explanation :--The term goods referred to in this sub section shall not include luggage of persons who cross the notified area.

(2-A) Notwithstanding the provisions of sub section (2), the Government may, in addition to the requirements under subsection (2), by notification require a person importing such goods as may be notified from time to time, to furnish such declaration and in such manner as may be prescribed.]

2[(3) (a) In any notified area or at any other place, an officer Incharge of the said area or the Commissioner or any other officer,

not below the rank of inspector, duly authorized by the Commissioner, may require--

(i) the driver or any other person incharge of the vehicle or any other conveyance, as the case may be, to stop the vehicle or conveyance and put it stationary, as long as may be necessary, for the purpose of examining the goods under transport and other contents of the vehicle including records relating to the goods which are in the possession of the driver or such other person;

(ii) any person Incharge of a godown or any other premises of transport agency, clearing or forwarding agency, other than a rail head or a post office, to produce for inspection transport receipts, account books and other documents concerning the goods carried, transported, loaded, unloaded, consigned or received for transport maintained in the ordinary course of business and in the prescribed manner.

(b) the Commissioner and any other officer referred to in clause (a) of this sub-section shall for the purpose of investigation have powers to--

(i) search the vehicle or conveyance and the driver or other person incharge of the vehicle or conveyance;

(ii) break, open any package or packages under transport in a vehicle or found in godown or premises of the transport agency or the clearing or forwarding agency;

1 In section 15-A, sub section 2-A inserted vide Act No. XVIII of 1988 dated 31.8.1988

2 substituted by Act XIII of 1978

(iii) Examine on oath the driver or owner of the vehicle or conveyance or the person Incharge of the transport agency or clearing or forwarding agency; and

(iv) seize the receipts, account books and other documents; Provided that before seizing he shall record the reasons in writing and make an inventory of the goods seized, a copy of which shall be handed over to the driver or owner of the vehicle or the person Incharge of the transport agency or clearing or forwarding agency as the case may be. The seized records shall be impounded, in the prescribed manner so long as their retention may be necessary for the propose of this Act.]

(4) (a) The goods which are covered by sub-section (2) whether found in vehicle or other conveyance, or godown or any other premises of any transporter, clearing or forwarding agency, or any other place, but which are not supported by the documents specified in said sub-section, or if supported, such document are

fake, false or suspected to be fake or false in respect of the particulars contained therein, shall be seized by the Officer Incharge, Notified Area or any other officer referred to in subsection (3) after recording reasons in writing and the owner of such goods shall be liable to penalty which shall be equal to double the amount of tax payable on such goods deeming the invoice value or market value thereof, whichever is higher, as sale price:

Provided that the goods liable to seizure and or seized may, subject to the security furnished in prescribed form for a value equal to the amount of maximum leviable penalty be released.]

(b) No order of penalty under clause (a) shall be made unless the affected person is given a reasonable opportunity of being heard. The goods for the value equal to the amount of penalty or the security furnished under sub-section (4), as the case may be, shall not be released unless the amount of penalty levied is paid.]

(5) The officer who detained or seized the goods may release them temporarily on cash or other prescribed security being furnished by the person concerned to the extent of the 4[penalty leviable] if such officer is satisfied, that it is necessary to do so in the public interest or such other circumstances and subject to such other conditions as may be prescribed.]

1 substituted by Act No. XX of 1981

2 Clause (b) substituted vide Act No. X of 1984 w.e.f.1.5.1984

3 substituted by Act XIII of 1978

4 Substituted by Act X of 1984

(6) Nothing contained in sub-section (4) or sub-section (5) shall apply in the case of goods transported, which are exempt from tax under any of the provisions of this Act without any condition or restriction.

(7) No dealer or any person, including a carrier of goods or agent of a transporter or booking agency acting on behalf of a dealer shall take delivery of, or transport, from any vehicle or other conveyance, station, airport, or any other place, whether of similar nature or otherwise, any consignment of goods, the sale 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 tax.]

8-(a) The transport agency (by whatever name called) 2[or owner or Incharge of the vehicle/carrier/conveyance (by whatever name called)] which has booked the goods referred to in sub-section (4) for transport and delivery to the consignee or to which is attached the vehicle which has carried or is carrying those goods, shall pay,

by way of penalty a sum not less than 3[20%] but not more than 3[40%] of the invoice value or the market value of such goods, which ever is higher;

Provided that if the vehicle is not attached to any transport agency or the transport agency has no place of business in the State, a person deemed to be an agent of such transport agency available in the State or the owner of the vehicle, shall be liable to the said penalty: Provided further before levying penalty the affected person shall ordinarily be given an opportunity of not less than seven days, unless there are reasons to be recorded in writing for giving a shorter notice, to prove to the satisfaction of the concerned officer that the lack of supporting documents specified in sub-section (1) or the fakeness or falsity thereof was not within his knowledge. A certified copy of the order of levying penalty or dropping the proceedings shall be issued to the said person;

Provided further that the vehicle, which has carried or is carrying goods without documents as specified in sub section (2), shall not be released unless security equivalent to penalty leviable under clause (b) is furnished. The security thus furnished shall be adjusted against the penalty leviable or refunded after determining the liability or otherwise under clause 5(a);]

Explanation - The lack of supporting documents or the fakeness or falsity thereof shall be deemed to be within the knowledge of the owner of the vehicle or conveyance if he without reasonable cause fails to comply with any of the requirements of the provisions contained in this section.

1 sub section (7) (8) (9) and (10) inserted by Act XIII of 1978

2 The words in brackets inserted vide Act No. VII of 2001.

3 Substituted vide Act No. III of 2000.

4 Proviso added vide Act No. VII of 2001.

5 Substituted vide Act No. XIII of 2002 (S-6)

1[(b) Where a transport company {by whatever name 7called} to whom goods are handed over on suparadnama, in accordance with the rules issued under the Act releases such goods without obtaining the release order from the Competent Authority, such transport agency shall be liable to a penalty equal to double the amount of tax payable on such goods.]

(9) Where the taxable goods are transported on behalf of an unregistered dealer, 2[or a registered dealer in whose registration certificate the goods imported are not covered], the officer Incharge of the notified area check post or barrier, 3[or any officer authorized under subsection (3)] shall detain 4[and seize], the

goods, unless the dealer, the driver of the vehicle or conveyance or any other person incharge of the goods, furnishes security in the prescribed form for an amount equal to 5[duplicate the amount of tax, payable on the market value or invoice value, whichever is higher] of such goods. The security thus furnished shall be adjusted against the tax, penalty, interest, fee or any other sum that may be payable by such dealer under the provisions of this Act. The excess amount of security, if any, shall be refundable in the manner laid down in this Act. The provisions relating to 6[detention and search of goods] contained in this section shall, in so far as may be applicable apply under this sub-section:

Provided that if the said dealer fails to obtain a certificate of registration under this Act within a period of 8[90] days from the date of deposit of security and the Assessing Authority has no information in his possession that the dealer is carrying on regular business of selling taxable goods, the amount of security deposited shall be deemed to be the tax payable by the dealer and no claim for refund of such amount or any part thereof shall be entertained.]

(10) The officer referred to in sub-section (9) shall maintain a register in the prescribed form containing the names and addresses of the dealers against whom action has been taken and such other particulars as may be prescribed. He shall also furnish such information in this behalf, as may be prescribed, to the Deputy Sales Tax Commissioner having jurisdiction over the place of business of the said dealer.

1 Sub clause (b) of sub section (8) inserted vide Act No. III of 2000

2 In sub section (9) the words and brackets added vide Act No. VII of 2001.

3 Inserted vide Act XX of 1981.

4 Substituted *ibid*.

5 The words substituted for the figures "20%" vide Act No. XX of 1991 dated 1.7.1981

6 Substituted vide Act No. X of 1984 w.e.f.1.5.1984.

7 Proviso added vide Act No. XVIII of 1988 dated 31.8.1988.

8 Words "180" substituted with word "90" vide Act No. IV of 2005.

(11) If the goods seized under sub-section (4) or sub-section (9) are not claimed within a period of 2[90] days from the date of seizure or in case of perishable goods in a lesser period as determined by the authority making the seizure, such goods shall be sold by auction in the prescribed manner and the sale proceeds thereof as reduced by the amount of penalty and security payable

under this Act besides other expenses incurred on unloading, handling and auctioning, shall be deposited in the treasury under appropriate head of account. This amount shall be refundable to the owner of such goods on an application made in prescribed form and in prescribed manner within a period not exceeding 180 days from the date of auction. In case no claim of ownership is made within the said period, the amount shall be forfeited to the Government. No interest shall accrue on such amount;]

Provided that if the goods seized under sub section (4) or sub-section 9 are handed over to a transport agency on superdnama, the officer Incharge referred to in this section shall transfer the goods with relevant documents for disposal to the appropriate authority having jurisdiction over the area, or any other officer authorized in this behalf by the Commissioner, who shall take cognizance of the cases referred to him and finalize them in accordance with the provisions of the Act as soon as he receives documents of seizure from the officer Incharge of the area notified under this section.

15B. Forwarding Agency, Etc. To Obtain Certificate Of Registration And Submit Returns :-

(1) For carrying out the purposes of section 15-A, every transport agency, clearing or forwarding agency, having a place of business in the State and importing 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 Deputy Sales Tax Commissioner of the Area in which it has a place of business on payment of a fee of two hundred rupees and on furnishing of security not exceeding five thousand rupees in the manner as may be prescribed.

(2) The agencies referred to in sub-section (1) shall submit to the Deputy Sales Tax Commissioner or an assessing authority authorised in writing by the Commissioner, prescribed returns of the goods transported, cleared or forwarded by it.

(3) The authorities referred to in sub-section (2) shall have the powers to call for and examine the books of account, documents and other records in possession of such agency with a view to verifying the correctness of returns submitted and the compliance to the requirements of the provisions of section 15-A.

15C. Deleted :-

16. Recovery Of Tax As Arrears Of Land Revenue :-

(1) Any amount of tax, penalty, interest, or any other sum 7[payable] under this Act which is not paid in accordance with the other provisions of this Act shall, on the issue of certificate in the prescribed form to the collector of the concerned District, be recoverable, as arrears of land revenue. The copy of the said certificate shall be forwarded to the defaulter on his last known address.]

(2) Any question as to whether a tax 1[or any other sum] is recoverable under this Act, the person from whom it is due and the amount so recoverable shall be determined by the assessing authority.

(3) A certificate over the signature of the 2[appropriate authority] shall be final and a conclusive proof both as to the amount of the tax, which is due and as to the person from whom it is due.

(4) For the purpose of recovery of tax and any other sum payable under this Act, the taxation authorities shall exercise the powers vested in the authorities under the Jammu and Kashmir Land Revenue Act, Samvat 1996, as specified below and all the provisions of the said Act shall so far as they may, apply to the recovery of arrears specified in the certificate as amended from time to time. -

(a) the Commissioner shall exercise the powers vested in Divisional Commissioner:

(b) the Deputy Commissioner (Recovery) shall exercise the powers vested in Collector : and

(c) the Assessing Authorities shall exercise the powers vested in Assistant Collector 1st Class.]

(d) the Excise and Taxation Officer posted in Recovery Wing shall exercise the powers vested in Assistant Collector, First Class within such area as may be specified by the Commissioner from time to time;

1 Sub section (11) added vide Act No. XVIII of 1988 dated 31.3.1988.

2 Words "180" substituted with word "90" vide Act No. IV of 2005

3 Proviso added vide Act No. XIII of 2000 dated 14.11.2000.

4 Substituted by Act XIII of 1978.

5 Omitted vide Act No. X of 1984 w.e.f. 1.5.1984.

6 Substituted vide Act No. XIII of 1978

7 Substituted vide Act No. XX of 1981

16A. Further Mode Of Recovery :-

(1) (a) Notwithstanding anything contained in section 16 or any other law for the time being in force or any contract to the contrary the 6[appropriate authority] may, at any time or from time to time by notice in writing (a copy of which shall be forwarded to the assessee at his last known address) require any person from whom money is due, or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the 6[appropriate authority] either forthwith if the money has become due or is held, or within the time specified in the notice (not being before the money becomes due or is held) as much of the money as is sufficient to pay the amount due by the assessee in respect of the arrears or whole of the money when it is equal to or less than that amount:

(b) the assessing authority may at any time or from time to time amend or revoke any such notice or extend the time limit for making any payment in pursuance of the notice and send necessary intimation to the assessee as well;

(c) any person making any payment in compliance with the notice under clause (a) shall be deemed to have made the payment under the authority of the assessee and the receipt of the appropriate authority shall constitute a sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt ;

(d) Any person making any payment to the assessee after receipt of the notice shall be personally liable to the 1[appropriate authority] to the extent of his own liability to the assessee, so discharged, or to the extent of the assessee's liability for any sum specified in the notice, whichever is lesser;

(e) Where any person to whom a notice under clause (a) is sent objects to it by a statement on oath on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any amount of money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay the sum demanded, or any part thereof to the 1[appropriate authority] but if it is discovered that such statement was false in any material part such person shall be personally liable to the 1[appropriate authority] to the extent of his own liability to the assessee on the date of the receipt of the notice or to the extent of the assessee's liability for the sum specified in

the notice, whichever is lesser ;

(f) any amount which a person is required to pay to the 1[appropriate authority] or for which he is liable to the appropriate authority under this section shall, if it remains unpaid, be a charge on the properties of the said person which shall be recovered from him as if it were an arrear of land revenue.

(2) The 1[appropriate authority] may apply to the court in whose custody there is money belonging to the assessee for the payment to him of the entire amount of such money, or if it is more than the amount due from the assessee under this Act, the amount sufficient to discharge such liability.

(3) Save as otherwise provided in this section, every person to whom a notice is issued under sub-section (1) shall be bound to comply with such notice, and in particular, where such notice is issued to a Post Office, Banking Company or Insurer, it shall not be necessary for any pass books, policy or any other document to be produced for the purpose of any entry endorsement or like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

Explanation - For the purpose of this section the amount due to an assessee shall be computed after taking into account such claims as may have fallen due for payment by such assessee and may be lawfully subsisting.

1 Inserted by Act X of 1984

2 Substituted by Act X of 1984

3 Sub section 4 of section 16 added vide Act X of 1984 w.e.f.1.5.1984

4 Added vide Act No. IV of 2005

5 Sections 16-A, 16-B, 16-C and 16-D inserted vide Act No. XIII of 1978

6 Substituted by Act X of 1984

16AA. Liability Under The Act To Be First Charge :-
Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.

16B. Bar Of Limitation For Commencing Proceeding :- No proceeding for the recovery of any sum payable under this Act shall be commenced after the expiry of one year from the last date of the financial year in which 2[assessment] is made or, in the case of a person who is deemed to be an assessee in default under clause (f) of sub-section (1) of section 16-A after the expiry of one year from the last date of the financial year in which he is deemed to be an assessee in default.

Explanation I.-The period of one year referred to above shall be reckoned.-

(i) Where the date of payment of tax has been extended to an other date, from the last day of the financial year in which such date falls;

(ii) Where a sum payable is allowed to be paid in instalments from the last day of the financial year in which the last of such instalments is due;

(iii) where recovery proceedings in case have been stayed by an order of a court, from the last day of the financial year in which the order is withdrawn.

Explanation II. -The proceedings for the recovery of any sum shall be deemed to have been commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, by any mode of recovery specified in section 16 and section 16-A.

16C. Deduction Of Tax By Certain Persons And Deposit Thereof In The Treasury :-

(1) Any persons responsible for paying any sum being sale price of taxable goods to a dealer 3[in pursuance of a contract]on behalf of -

(a) any Department of the Government or Central Government;

1. Section 16-AA. Inserted vide J&K Taxation Laws Amendment Act, 2009.

2. Substituted by Act X of 1984.

3. The words inserted vide Act No. XX of 1981 dated 1.7.1981

(b) any local authority ;

(c) any Corporation 1[or a Government company] established by or under Central or State Act ;

(d) any Co-operative Society ; or

(e) any Board constituted by or under Central or State Act ; shall at the time of the credit of such sum to the account of the dealer at

the time of payment thereof in cash, by issue of cheque or draft or by any other mode whichever is earlier, deduct tax at the appropriate rate.

(b) in case of works contract the agencies referred to in clause (a) shall furnish copy of the agreement of the work contract executed with the contractor to the Deputy Sales Tax Commissioner of the area concerned in which such department/ agency falls.]

(2) The tax deducted under sub-section (1) shall be deposited in the treasury within fifteen days of the deduction in the prescribed manner.

(3) The person who deducts the tax under sub-section (1) shall issue a certificate in the prescribed form in duplicate to the dealer who shall attach one copy of the same to his quarterly or annual return, as the case may be, or in case the certificate is not received before filing such return shall furnish it within such time as may be allowed by the assessing authority.

(4) The person liable to deduct the tax under sub-section (1) shall send a statement in such form and in such manner, as may be prescribed, to the Deputy Sales Tax Commissioner within thirty days of the expiry of each quarter of the financial year.

(5) Any deductions made under sub-section (1) and paid to the Government shall be treated as payment of tax on behalf of the dealer from whose payment it was deducted, and credit shall be given to him for the sum so deducted on the production of the certificate furnished under sub-section (3) in the assessment for the year during which the sales were made.

(6) If the person referred to above in sub-section (1) after deduction fails to pay the tax, as is required by or under this Act, he shall without prejudice to any other consequence which he may incur, be liable to pay in addition to the tax so deducted, a sum, by way of penalty, equal to 10% of such amount and all the provisions of this Act shall, in so far as may be applicable, apply to the recovery of such sum.

Provided that the appropriate authority shall give him an opportunity of being heard before levy of penalty]

1 The words inserted vide Act No. XX of 1981 w.e.f.1.7.1981

2 Sub clause (b) of section 16-C added vide ACT No. IV of 2000

3 Inserted vide Act No. XIII of 2002 (S.7)

(7) If any person without reasonable cause fails to deduct the tax as required by sub-section (1) he shall pay by way of penalty a sum 1[equivalent to the tax so deductible] provided that before levy of penalty he shall be given a reasonable opportunity of being

heard by the appropriate authority

(8) If any dealer is not liable to pay tax under the provisions of this Act he may obtain a certificate in the prescribed form from the assessing authority having jurisdiction over his place of business to the effect that no deduction of tax may be made from the payment due to him and the person responsible for making payment shall on production of such certificate by the dealer make payment without deducting any tax.

8-a) If any dealer has paid the tax under this Act for the goods referred to under sub section (1) before receipt of the sale price of such goods from the persons it is receivable by the dealer, he may obtain a certificate in the prescribed form from the Assessing Authority having jurisdiction over his place of business to the effect that no deduction of tax may be made from the payment due to him and the person responsible for making payment shall on production of-

(i) such certificate by the dealer; and

(ii) the proof of having deposited the tax in respect of such transaction. make payment without deducting any tax.]

(9) if any person without any reasonable cause fails to submit copy of the agreement to the 3[appropriate authority] of the area concerned as required under clause (b) of sub-section (1) of this section he shall be liable to pay by way of penalty an amount of Rs. 5000/- per contract, provided that before levy of such penalty he shall be afforded a reasonable opportunity of being heard.]
Explanation. Appropriate rate of tax means the rate of tax applicable 4[on the date on which] the goods are sold or supplied.

16D. Clearance Certificate In Relation To Taxable Goods :- Any person being,-

(a) Department of the Government or Central Government ;

(b) a local authority;

(c) corporation established by or under Central or State Act ;

(d) a Co-operative Society ; or

(e) a Board constituted by or under Central or State Act ; 5[shall] before entertaining a tender for supply of taxable goods or sanctioning any contract, require the supplier or contractor to furnish the sales tax clearance certificate in a prescribed form issued by the assessing authority in such manner as may be prescribed.

17. Offences And Penalties :-

(1) if any person-

(a) carries business as a dealer in contravention of section 6 or contravenes any of provisions of this Act in respect of which penalty has not been prescribed under any other section of this Act ; or

(b) Without reasonable cause fails to furnish the returns as required by sub-sections (1), (2) or (3) of section 7 or fails to furnish it within the time allowed; or

(c) without reasonable cause fails to comply with the terms of any notice issued under section 7 ; or

(d) without reasonable cause fails to produce accounts, registers, documents or any other information required under sub-section (1) of section 15 ; or

(e) without reasonable cause fails to furnish the return as required by section 15-B ; or

(f) conceals his turnover or furnishes inaccurate particulars thereof ; or

Explanation: For the purpose of this clause a dealer who has concealed his turnover or furnished inaccurate particulars of his turnover in the original return but gives correct turnover and accurate particulars thereof in the revised return furnished under sub-section (4) of section 7 of this Act, shall not be deemed to have concealed his turnover or furnished inaccurate particulars thereof; provided he proves to the satisfaction of the concerned authority that the revised return was furnished voluntarily and not in consequence of any information having come to the knowledge of any authority appointed under this Act before the date of furnishing the revised return; or

(g) prevents or obstructs inspection, search or seizure under sub-sections (2), (3), (4) or (5) of section 15 or section 15-A; or

(h) charges tax on sale of goods in contravention of the provisions of this Act, but does not deposit the same within the period prescribed in sub-section (2) of section 8-B; or

(i) without reasonable cause fails to comply with the provisions of section 16-D; or

(j) fails to obtain certificate of registration; or

(k) fails to issue a sale bill or cash memo simultaneous with making a transaction of sale; or

(l) abets or aids a dealer in concealing his turnover or evasion of tax;

Explanation:- For the purpose of this clause a person shall be

deemed to have abetted or aided the dealer in concealing his turnover or evasion of tax, if he purchases goods from the dealer without cash memo or credit memo or invoice as the case may be; or

(m) purchases raw material free of tax for manufacturing goods on the basis of declaration to the selling dealer but disposes of the same otherwise than the said purpose; or

(n) stores goods in any place of business other than the place of business declared in an application required to be made under sub section (2) of section 6 of this Act; or

(o) fails to get the vehicle or goods cleared at the Checkpost established under section 15-A without a reasonable cause; or

(p) makes a statement during the course of any proceedings under this Act or the rules made thereunder which he knows to be false or does not believe to be true.

The appropriate authority shall direct that such person shall pay in addition to the fee or tax by way of penalty;

(i) for default specified in clause (a) a sum not exceeding Rupees five thousand.

(ii) for default specified in clause (b) a sum at the rate of 2% per month of the tax payable as reduced by the amount of tax paid during the period prescribed under sub-section (3) of section 8 of this Act for the period of default or rupees one thousand per month for the default whichever is higher.

(iii) for default specified in clause (c) a sum equal to 20% of the tax assessed as reduced by the tax paid on the basis of the quarterly returns during the period prescribed under sub-section (3) of section 8 if furnished;

(iv) for default specified under clause (d) and clause (e) a sum of Rupees fifty for each day of default subject to the maximum of Rupees one thousand.

(v) for default specified in clause (f) a sum not less than the amount of tax which was attempted to be evaded but not exceeding double the amount of such tax.

(vi) for default specified in clause (g) a sum not less than Rupees three thousand but not exceeding Rupees five thousand.;

(vii) for default specified in clause (h) a sum not exceeding 50% of the tax collected;

(viii) for default specified in clauses (i) a sum of five thousand rupees per contract ;

(ix) For defaults specified in clause (j) a sum equal to double the amount of tax payable for the period of default provided if the

dealer voluntarily furnishes the return and deposits the tax payable a penalty of not more than 20% of the tax due for the period of default.

(x) For default specified in clause (k) a penalty equal to five times of the tax payable on such transaction or five thousand rupees whichever is higher;

(xi) For default specified in clauses (l), (m), (n) a sum equal to double the amount of tax leviable on such goods;

(xii) For default specified in clause (o) a sum of five thousand rupees if the goods are of non taxable nature or exempt from payment of tax and double the amount of tax payable on such goods, if the goods are taxable; and

(xiii) For default specified in clause (p) a sum of not less than five thousand rupees.]

(2) Before passing an order under sub-section (1) of this section the authorities concerned shall give the person in default an opportunity of being heard; provided that no order of penalty shall be passed after the expiry of two years from the close of the financial year in which such penalty proceedings were initiated.

1[Provided further that a fresh order under sub section (1) of this section in pursuance of order under section 11 or section 12 of this Act shall be passed within 2 years after close of the financial year in which the order under section 11 or section 12 of the Act is passed.

1 Inserted by Act XXIII of 2002 (S-2)

2 Sub Section 9 added vide Act No. III of 2000

3 Inserted and substituted vide Act XIII of 2002 (S-7)

4 Substituted by Act X of 1984

5 Substituted by Act X of 1984

6 Substituted firstly by Act XIII of 1978 & again vide Act No. VII of 2001 dated 12.4.2001

17A. Penalty For Failure To Submit Returns :-

(1) If any person -

(a) prevents or obstructs the inspection under sub-section (2), (3) and (5) of section 15 of the Act ; or

(b) Willfully fails to furnish the return as required under subsection (1) or (2) or by a notice under sub-section (3) of section 7 of the Act; or

(c) conceals taxable turnover or furnish inaccurate particulars thereof ; or

(d) fails to obtain certificate of registration as required under sub-section (1) of section 6 or section 15-B of the Act ; or

- (e) furnishes copies of trading account, purchase statement and sale statement without maintaining regular books of accounts to support them; or
- (f) makes a statement during the course of any proceedings under this Act or the rules made thereunder which he knows to be false or does not believe to be true ; or
- (g) Prevents or obstructs inspection of any vehicle or conveyance carrying goods at a check post or barrier or a godown or other premises of clearing or forwarding agencies or transport operator or any other place under section 15-A of this Act; or
- (h) fails to pay the tax payable under the Act; or
- (i) fails to furnish a return under section 15-B or furnishes an incorrect return; he shall on conviction by a Judicial Magistrate, be liable to simple imprisonment which may extend to six months or with fine which may extend to Rs. 5,000 or with both ; Provided that a person shall not be proceeded against if,--
 - (i) the offence is under clause (b) and the return is furnished by him before the expiry of relevant assessment year ; or
 - (i) the offence is under clause (e) and the taxable turnover of a dealer does not exceed Rs.50,000 ; or
 - (ii) the offence is under clause (h) and the amount of tax payable does not exceed Rs.5,000 ;

Provided further that no prosecution shall be launched under this section unless prior permission of the Commissioner has been obtained.

(2) No court shall take cognizance of an offence under this section except on a complaint in writing by the 1[appropriate authority] having jurisdiction.

1 Proviso added vide Act No. XVIII of 1988 dated 31.8.1988.

2 Sub section (1) of Section 17-A substituted vide Act No. X of 1984 w.e.f. 1.5.1984.

18. Composition Of Offences :-

(1) The Commissioner may accept from any person who is reasonably suspected of having committed an offence under this Act, a sum of money as he may determine by way of composition of such offences.

(2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no proceedings shall be commenced against such person as aforesaid and if any

proceedings had been already commenced against such person as aforesaid, such proceedings shall not be further proceeded with.

19. Bar On Certain Proceedings :-

No assessment made and no order passed under this Act, or the rules made thereunder shall be called in question in any Civil Court.

20. Indemnity :-

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

21. Liability In Case Of Firms Or Associations Discontinued, Dissolved Or Transferred :-

(1) Where any business, the turnover of which is liable to tax under this Act, carried on by a firm or any other association of persons has been discontinued or where a firm or other association is dissolved, the assessing authority shall make an assessment of the turnover of the firm or other association of persons as if no such discontinuance or dissolution has taken place.

(2) All the persons who were at the time of such discontinuance or dissolution partners of the firm or members of the association, as the case may be, shall be jointly and severally liable for the amount of tax or penalty payable and all the provisions of this Act, so far as may be, shall apply to such assessment or imposition of penalty or other sums.

(3) When the ownership of the business of a dealer liable to pay the tax or penalty is entirely transferred, the transferer and the transferee shall jointly and severally be liable to pay any tax or penalty payable in respect of such business and remaining unpaid at the time of transfer.

1 Substituted by Act X of 1984

21A. Recovery Of Tax From Private Companies :-

(1) Notwithstanding anything contained in any other law for the time being in force, where any tax due from a private company, whether existing or under liquidation or liquidated, cannot be recovered, every person who was Director of that private company at any time during the year shall be jointly and severally liable to the payment of such tax unless he proves to the satisfaction of the assessing authority that the non-recovery is not attributable to any gross negligence, misfeasance or breach of duty on his part in

relation to the affairs of the company.]

(2) A Hindu undivided family notwithstanding its partition complete or partial, shall be deemed to continue as undivided so long as any proceedings under the Act are pending or can be initiated under any provision of the Act for the purpose of levy and recovery of any amount or tax, penalty or interest and all erstwhile members of such family shall be personally and jointly liable to deposit any such sum payable by the family.

22. Powers Of Commissioner And His Assistants To Take Evidence On Oath Etc :-

The Commissioner, the appellate authority ³[or any other authority not below the rank of assessing authority appointed to assist the Commissioner shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, Svt. 1977, when trying a suit, in respect of the following matters, namely; --

- (a) Enforcing the attendance of any person and examining him on oath or affirmation;
- (b) Compelling the production of documents; and
- (c) Issuing commissions for the examination of witnesses.]

22A. Appearance By Authorised Representative :- Subject to such conditions as may be prescribed, any person who is entitled or required to attend or appear before any authority appointed under this Act may, except when required to attend personally, attend either in person or through any person authorized by him in writing in this behalf.

23. Omitted :-

1 Section 21-A inserted by Act XIII of 1978 and sub section (2) of the said section 21-A inserted vide act No. X of 1984 w.e.f.1.5.1984

2 Substituted by Act XXV of 1972

3 Substituted by Act No.X of 1984

4 Section 22-A inserted by Act No. XXV of 1972

5 Section 23 deleted vide Act No. XVIII of 1976

24. Rectification Of Mistakes :-

(1) The authority appointed under section 3 of the Act either of his

own motion or on application may, at any time, within three years from the date of any order passed by him, rectify any mistake apparent on the face of record : Provided that no such rectification which is prejudicial to the assessee shall be made unless the authority concerned has given notice to the dealer of his intention to do so and allowed him a reasonable opportunity of being heard.]

(2) Where such rectification has the effect of enhancing the assessment, the authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of this Act and the rules framed thereunder shall apply as if such notice had been served in the first instance.

24A. Omitted :-

25. Certain Information To Be Confidential :-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act or of the rules made thereunder, or in any evidence given or affidavit or disposition made in the course of any proceedings under this Act or the rules made thereunder, or in record of any proceedings relating to the recovery of a demand prepared for purpose of this Act or the rules made thereunder, shall be treated as confidential.

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

(i) for the purpose of a prosecution under the Ranbir Penal Code in respect of any such statement, return, account, documents, affidavit or disposition or for the purposes of prosecution under the Act or the rules made thereunder, or

(ii) to any person acting in the execution of this Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of this Act or the rules made thereunder, or

(iii) Occasioned by the lawful employment under this Act or the rules made thereunder of any process for the recovery of any demand, or

(iv) to an officer of Central-Government, or Government of any other State, for the purpose of enabling that Government to levy or realise any tax imposed by it, or

(v) to any officer appointed by the Comptroller and Auditor General of India or the State Government to audit Sales Tax receipts or refunds, or

(vi) required for the lawful exercise of a public servant of his powers under the Stamp Act, Samvat 1977 to impound an insufficiently stamped document.

1 Sub section (1) of section 24 substituted vide Act No. X of 1984 dated 1.5.1984

2 Omitted vide Act No. XII of 1978 dated 10.5.1978

25A. Power To Give Instructions :- The Commissioner may, from time to time issue such instructions not inconsistent with the provisions of this Act, or the rules made thereunder as he may consider necessary for purposes of implementing the provisions of this Act or the rules made thereunder.

25B. Computation Of Taxable Amount :- The amount of taxable turnover and the tax due, computed in accordance with the provisions of this Act and the rules made thereunder, shall respectively be rounded off to the nearest multiple of 10 and nearest multiple of 5.

25C. Determination Of Issues :- If any issue arises, otherwise than in a proceeding pending before a court or before assessing authority under section 7 of the Act as to whether for the purpose of this Act,--

(a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer ; or

(b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term ; or

(c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefore ; or

(d) any particular dealer is required to be registered ; or

(e) any tax is payable in respect of any particular sale or purchase and, if so, the rate of such tax ;

The persons or the dealer concerned may after depositing such fee as may be prescribed submit an application in prescribed form to the Commissioner.

(2) The Commissioner shall after giving the applicant an opportunity of being heard and making such enquiry as may be necessary decide the issue as he deems fit.

(3) No decision of Commissioner under this section shall affect the validity or operation of any order passed by any authority prior to

such decision.

(4) No question which arises from an order already passed by an authority under this Act shall be entertained for determination under this section.

(5) Copies of decision under this section shall be sent to the applicant and concerned authority.

1 Clause (v) and (vi) inserted by Act XIII of 1969

2 Section 25-A added by Act No. XXV of 1972

3 Section 25-B inserted by Act XIII of 1978

4 Section 25-C inserted vide Act X of 1984 dated 1.5.1984

25D. Immunity From Prosecution, Penalty And Interest In Certain Cases :- Notwithstanding anything contained in this Act, the Government may, if it is of the opinion, for reasons to be recorded in writing that it is necessary or expedient so to do in public interest by notification grant immunity from penalty for any offence under this Act or reduce or remit interest on arrears of tax admitted by the dealers or assessed by the concerned authorities subject to such conditions as it may like, to impose for such period, not exceeding six months, as may be specified:

Provided that the Government may extend the period of payment of arrears on account of admitted or assessed tax accrued upto 31st March 1997 without interest and penalty to a maximum period of 30 quarterly instalments from 1st April, 1999. This concession shall be available to those dealers who have been paying their admitted or assessed tax, as the case may be, regularly from the accounting year 1997-98 and also to those who have defaulted in the payment of tax during the years 1997-98 and 1998-99 but pay the entire amount of admitted or assessed tax for the years 1997-98 and 1998-99 by 31st July, 1999;]

Provided further that if any dealer makes a default in payment of one single instalment on account of arrears, he shall be liable to pay the same in the next following quarter alongwith the instalment due for that quarter. In case of any further default, the dealer shall be liable to pay the entire amount of arrears alongwith the interest and the penalty.

Provided also that the Government may, subject to such modifications and conditions as it may consider necessary, by notification in the Government Gazette, grant onetime extension in the immunity scheme under the first proviso to this section to such dealers who have failed to avail the same within the stipulated time

or defaulted in compliance of the terms and conditions thereto. Provided also that the Government may in the interest of industrial development of the State condone the default committed by any dealer operating an industrial unit with regard to any condition or grant extension of time for fulfillment of such condition(s) as specified in the Notifications issued in this behalf from time to time.]

1 Section 25-D originally inserted vide ACT No. XIV of 1987 dated 19.8.1987 and later on substituted vide Act No. III of 1998 dated 6.5.1998 and the provisos again substituted by Act No. XV of 1999.

2 Substituted by Act XV of 1999 (S.2) w.e.f.25.6.1999

3 Added by Act XXIII of 2002 (S.3)

26. Power To Make Rules :-

(1) The Government may after previous publications, make rules for carrying out the purpose of this Act.

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

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

(b) the manner in which the turnover shall be ascertained and the tax shall be assessed, levied or collected ;

(c) Omitted.]

(d) the instalments by which the tax shall be paid ;

(e) granting of licences and certificates to dealers and agents and imposing of conditions applicable to, and fee payable for such licenses and certificates ;

(f) the submission of returns, the production of documents and the attendance of persons and their examination on oath or affirmation ;

(g) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act ;

(h) the general regulation of the procedure to be followed and the forms to be adopted in proceedings under this Act.

(3) in making any rule under this section the Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees.

27. Repeal :-

The Jammu and Kashmir general Sales Tax Act, Svt. 2004 is hereby repealed. Notwithstanding such repeal, anything done or any action

taken under the said Act shall be deemed to have been done or taken under this Act as if this Act were in force on the day such thing was done or action was taken.

1 clause (c) of sub section (2) of section 26 omitted vide ACT No. XIII of 1969 dt.7.6.1969.

2 Sub section 3 added by Act No. XVIII of 1976

28. Validation Of Imposition And Collection Of Taxes On Controlled Goods Under Sales Tax Laws :-

(1) Notwithstanding any judgement, decree or order of any Court, all taxes imposed, assessed or collected or purporting to have been imposed assessed or collected under any sales tax law before the commencement of the Jammu and Kashmir General Sales Tax (Amendment) Act, 1966 on the transfers of any controlled goods shall be deemed to have been validly imposed, assessed or collected in accordance with law, as if the provisions of such Sales Tax Laws and of all notifications, orders and rules issued or made thereunder, in so far as such provisions relate to the imposition, assessment and collection of such tax on transfer of controlled goods had been included in and formed part of this section and this action had been in force at all material times when such tax on transfer of controlled goods was imposed, assessed or collected and accordingly---

(a) no suit or other proceeding shall be maintained or continued in any Court for the refund of any tax paid on transfers of controlled goods under any sales tax law ;

(b) no Court shall enforce a decree or order directing the refund of any tax paid on transfer of controlled goods under any sales tax law ; and

(c) any tax imposed or assessed on transfers of controlled goods under any sales tax law before the commencement of the Jammu and Kashmir General Sales Tax (Amendment) Act, 1966 but not collected before such commencement may be recovered (after assessment of the tax, where necessary) in the manner provided under that law.

(2) For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person---

(a) from questioning in accordance with the provisions of any sales tax law and rules made thereunder the assessment of any tax on transfers of controlled goods for any period ; or

(b) from claiming refund of any tax on transfers of controlled goods

paid by him in excess of the amount due from him under any sales tax law and the rules made thereunder.

(3) In this section--

(a) reference to sales tax law will be construed as reference to general sales tax law where tax on transfers of any controlled goods was imposed assessed or collected under such general sales tax law ;

(b) tax includes imposition of penalty.]

1 Section 28 inserted by Act XXIX of 1966

28A. Validation Of Acts Done After Expiration Of Ordinance No. IX Of 1968 :-

(1) Notwithstanding the expiration of the Jammu and Kashmir General Sales Tax (Second Amendment) Ordinance 1968 (ordinance No. IX of 1968) (in this section referred to as the said Ordinance) any tax assessed, paid or recovered, any proceedings taken, penalty or liability incurred, any right or privilege accrued, any Checkpost set up, barrier erected or any order made or any act or thing done by any authority, purporting to act under or in pursuance of the said Ordinance during the period intervening the day on which the said Ordinance expired and the day of commencement of the Ordinance, both days inclusive shall, so far as may be consistent with the provisions of the said Ordinance be valid and be always deemed to have been validly assessed, paid or recovered, taken, incurred, accrued, set up, erected, made or done, and all such assessments, payments, recoveries proceedings, penalties or liabilities, rights or privilege, check posts, barriers, orders, acts or things shall continue to be valid and effective under this Ordinance.

(2) No suit or other legal proceedings shall lie against any authority, or officer on account of or in respect of any thing or any action validated under sub section (1).

29. Validation Of Assessment, Etc :-

Notwithstanding anything contained in any judgement, decree or order of any court or other authority to the contrary, any assessment, re-assessment levy or collection of any tax made or purporting to have been made or anything done, any action taken in relation to such assessment, reassessment, levy or collection under the provisions of the Principal Act before the commencement of the Jammu and Kashmir General Sales Tax (Amendment and Validation) Ordinance 1970 shall be deemed to be as valid and

effective as if such assessment, re-assessment, levy, collection, thing or action had been made, done or taken under the Principal Act as amended by the Jammu and Kashmir General Sales Tax (Amendment and Validation) Ordinance, 1970 and accordingly -

(a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment reassessment, levy or collection of such tax shall, for all purposes, be deemed to be, and to have always been done or taken in accordance with law ;

(b) no suit or other proceedings shall be maintained or continued in any Court or before any authority for the refund of any such tax ; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person--

(a) from questioning in accordance with the provisions of the principal Act as amended by the Jammu and Kashmir General Sales Tax (Amendment and Validation) Ordinance Act, 1970, any assessment, re-assessment, levy or collection of tax referred to in sub-section (1) ; or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the Principal Act as amended by the Jammu and Kashmir General Sales Tax (Amendment and Validation) Ordinance, 1970.

1 Inserted vide Ordinance No.VII of 1969

2 Added vide Act No. XVI of 1970

30. Validation Of Imposition Or Collection Of Tax On Food Or Any Article Of Food Or Other Eatables Or Any Other Drinks Under The Sales Tax Act :-

(1) Notwithstanding anything contained in any judgement, decree or order of any Court or other authority to the contrary, all taxes imposed, assessed or collected or purporting to have been imposed, assessed or collected on the goods, being food or any article of food or drink (whether or not intoxicating) supplied or served by way of or as part of any service or in any other manner whatsoever, with or without any amenity in a restaurant, under any sales tax law before the commencement of the Jammu and Kashmir General Sales Tax (Amendment) Act, 1981, shall be deemed to have been validly imposed, assessed or collected in accordance with the law as

amended by the Jammu and Kashmir General Sales Tax (Amendment) Act 1981 and accordingly.--

(a) no suit or other proceeding shall be maintained or continued in any Court or before any authority for the refund of any such tax ;

(b) no Court shall enforce any decree or order directing the refund of any such tax ; and

(c) any tax imposed or assessed on the aforesaid goods under any sales tax law before the commencement of the Jammu and Kashmir General Sales Tax (Amendment) Act, 1981 but 1 Section 30 added.