

## **Bombay Sales Tax Act, 1959**

### **51 of 1959**

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## **Bombay Sales Tax Act, 1959**

### **51 of 1959**

An Act to consolidate and amend the law relating to the levy of tax on the sale or purchase of certain goods in the State of Bombay

## **CHAPTER 1 CHAPTER**

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

(1) This Act may be called the Bombay Sales Tax Act, 1959

(2) It extends to the 1 [State of Maharashtra.] [. ..]

1. These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

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

In this Act, unless the context otherwise requires, -

(1) "Agriculture" means with all its grammatical variations and cognate expressions, includes horticulture, the raising of crops, grass or garden produce, and also grazing; but does not include dairy farming, poultry farming, stock breeding or the mere cutting of wood or grass or fathoring of fruit or 3[raising of man-made forests or rearing of seedlings or plants]; 1[Explanation - For the purposes of this clause and clause (5A), the expression "forest" means the forest to which the Forests Act, 1927, in its application to the State of Maharashtra, applies;]

(2) "Agriculturist" means a person who cultivates land personally (for the purpose of agriculture);

(3) "Appointed day" means 5[the 1st day of January 1960;]

(4) "Authorization" means an authorization granted under Section 24 ;

(5) "Authorized dealer" means a Registered dealer who holds an Authorization;

6[(5A-1) "Brand name" means a brand name, whether registered or not, that is to say, a name or a mark such as a symbol, monogram, label, signature or invented word or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.]

7[(5A) "Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture 8[whether or not such trade, commerce or manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not gain or profit accrues from such trade, commerce or manufacture, adventure or concern] and any transaction in connection with, or incidental to ancillary to, such trade, commerce or manufacture, adventure or concern;] 9[and any transaction in connection with, or incidental to ancillary to, the commencement or closure of such trade, commerce or manufacture, adventure or concern;] 10[Explanation - For the purposes of this clause. 11[(i) the activities of raising of man-made forests or rearing of seedlings or plants shall be

1[(ii) any transaction of sale or purchase of capital assets pertaining to such trade, commerce or manufacture, adventure or concern shall be deemed to be;business and the expression "capital assets" shall have the same meaning assigned to it in the Income Tax, 1961.11

2[(iii) purchases of any goods, the price of which is debited to the

business shall be deemed to be the purchases effected in the course of business;

(iv) sales of goods, the proceeds of which are credited to the business shall be deemed to be the sales effected in the course of business]]

3[(5B) "Certificate of Entitlement" means a certificate issued by the Commissioner in respect of sales tax incentives by-way of exemption from, or deferral of, payment of tax liability under the relevant Package Scheme of Incentives;]

(6) "Commission agent" means a Registered dealer who bona fide buys, or sells, for an agreed commission, any goods on behalf of principals mentioned in his accounts in respect of each transaction;

( 7 ) "Commissioner" means the person appointed to be the Commissioner of Sales Tax for the purposes of this Act;

(8) "to cultivate" with its grammatical variations and cognate expressions, means to carry out any agricultural operation;

(9) "to cultivate personally" means to cultivate on ones own account-

(i) by ones own labour, or

(ii) by the labour of ones own family, or

(iii) by servants on wages payable in cash or kind (but not in crop share), or by hired labour under ones personal supervision or the personal supervision of any member of ones family;

Explanation 1 - A widow or a minor, or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour. Explanation 2 - In the case of a Hindu undivided family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

(10) "Declared goods" means declared goods as defined in the Central Sales Tax Act, 1956;

(11) "Dealer" means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State, and includes 4[the Central Government, or any State Government] which carries on such business and also any society, club or other association of persons which buys goods from or sells goods to, its members;

5[Exception I - An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause;

6[Exception II-An educational institution carrying on the activity of

manufacturing, buying, selling or supplying goods, in performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause;

[Exception III- A transporter holding permit for transport vehicles (including crane) granted under the Motor Vehicles Act, 1988 , which are used or adopted to be used for hire shall not be deemed to be a dealer within the meaning of this clause in respect of sale or purchase of such transport vehicles or parts, components or accessories thereof.]

7[ExplanaLion - For the purposes of this clause-

8[(i) each of the following persons and bodies who dispose of any goods 9[including goods] as unclaimed or confiscated or as unservicable or as 10[scrap, surplus, old, obsolete or discarded material or waste products] whether by auction or otherwise, directly or through an agent for cash,

"(a) Port Trust]

(b) Municipal Corporation and Municipal Councils and other local authorities;

(c) Railway administration as defined under the Indian Railways Act, 1890]2;

(d) Shipping, [\* \*j Construction Companies;

(e) Air transport companies and Airlines;

(f)[\* \*]

(g) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporations Act, 1950;

(h) Customs Department of the Government of India administering the Customs Act, 1962]3

4[(i) Insurance and financial corporations or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934;

(j) Advertising Agencies.

(k) any other corporation, company, body or authority owned or set-up by, or subject to the administrative control of, the Central Government or any State Government;]

5[(l) incorporated or un- incorporated society, club or other association of persons;]

6[(ii) an auctioneer, who sells or auctions goods belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal, shall, notwithstanding anything contained in clause (5A) or any other provisions of this Act, be deemed to be a dealer;

(iii) a factor, broker, commission agent, del credere agent or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal or principals whether disclosed or not, shall, notwithstanding anything contained in clause (5A) or any other provisions of this Act, be deemed to be a dealer;]

7[( 11 A) "District Industries Center concerned" in relation to any Eligible Unit means the District Industries Center established by the State Government in the district, in which the said Eligible Unit is situated;]

(12) "Earlier law" means any of the following laws, that is to say,-

- (i) the Bombay Sales Tax Act, 1946,
- (ii) the Bombay Sales Tax (No.2) Ordinance, 1952,
- (iii) the Bombay Sales Tax Act, 1953,
- (iv) the Bombay Sales of Intoxicants Taxation Act, 1953,
- (v) the Central Provinces and Berar Sales Tax Act, 1947,
- (vi) the Hyderabad General Sales Tax Act, 1950,
- (vii) the Saurashtra Sales Tax Ordinance, 1950,
- (viii) the Central Provinces and Berar Sales Tax Act, 1947, as in force in the Kutch area of the "(State of Bombay, or
- (ix) the Central Provinces and Berar Sales of Lubricants Taxation Act, 1938 as amended from time to time, and includes enactments which have validated anything done or omitted to be done thereunder;

9[(12A) "Eligible Oil Unit" means an Eligible Unit engaged in-

- (i) delinting, decorticating or processing of groundnuts or other oilseeds, or
- (ii) crushing of groundnuts or other oilseeds and manufacture of edible oil, or
- (iii) refining of oil and manufacture of edible oil, or
- (iv) manufacture of edible oil by any process in any manner, or
- (v) hydrogenation of edible oil;]

1[(12B) "Eligibility Certificate" means a certificate granted by SICOM or the relevant Regional Development Corporation 2[or the District Industries Center concerned] 3[or the Maharashtra Tourism Development Corporation] [in respect of sales tax incentives by way of exemption from, or deferral of, payment of tax liability under the relevant Package Scheme of Incentives] designed by the State Government, for promoting industrialisation of the backward areas of the State;]

5[(12C) "Eligible Unit" means the Industrial Unit in respect of which an Eligibility Certificate is issued;]



6[(13) "Goods" means every kind of movable property (not being newspapers or auctionable claims or money, or stocks, shares or securities), and includes growing crops, grass and trees and plants (including the produce thereof) and all other things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;]

(14) "Importer" means a dealer who brings any goods into the State or to whom any goods are dispatched from any place outside the State;

(15) 7[ \* \*];

(16) [• • \*];

8[( 17) "Manufacture" with its grammatical variations and cognate expressions, includes,-

(a) producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, or using or applying any such process as the State Government may, having regard to the impact thereof on any goods or to the extent of alteration in the nature, character or utility of any goods brought about by such process, by notification in the Official Gazette specify;

(b) cutting, sawing, shaping, sizing or hewing of timber; and

(c) refining of oil;

9[(d) lacquering of polyester film]. But does not include such manufacture or manufacturing process as may be prescribed;]

10[(17A) "Notified day" means the day on which the Maharashtra Sales Tax (Amendment) Act, 1981 comes into force under the notification issued under sub-section (2) of section 1 of thatAct;]

(18) "Permit" means a permit granted to a Commission agent under section 26 ;

(19) "Person" includes any company or association or body of individuals whether incorporated or not and also a Hindu undivided family, a firm or a local authority;

(20) "Place of business" includes a warehouse, godown or other place where a dealer stores his goods and any place where he keeps his books of accounts;

(21) "Prescribed" means prescribed by rules;

(22) "Purchase price" means the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than 11[the cost of insurance for transit or of installation], when such cost is separately charged;

12[Explanation 13[1]- For the purposes of this clause, the amount of duties levied or leviable on goods under the Central Excise and Salt Act, 1944, or the Customs Act, 1962 or the Bombay prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such

3[Explanation II- Purchase price shall not include sales tax, 1[turnover tax, surcharge and resales tax] paid or payable by a person in respect of any such purchase.] •

(23) 2[\* \* \* «]

(24) [\* \* \*]

(25) "Registered dealer" means a dealer registered under section 22 ;

3[(25A) "relevant Regional Development Corporation"-

(a) in relation to the Vidarbha area of the State, means the Development Corporation of Vidarbha Limited, a Government company registered under the Companies Act, 1956;

(b) in relation to the Konkan revenue division excluding the City of Bombay and the Bombay Suburban Districts, means the Development Corporation of Konkan Limited, a Government company registered under the Companies Act, 1956;

(c) in relation to the Marathwada area of the State, means the Marathwada Development Corporation Limited, a Government company registered under the Companies Act, 1956;

(d) in relation to the rest of Maharashtra, means the Western Maharashtra Development Corporation Limited, a Government company registered under the Companies Act, 1956;]

(26) "Re-sale" for the purposes of 45 Section 7 Section 8 Section 8A Section 9 Section 10 Section 12 Section 13 Section 13AA Section 13B ]] mean a sale of purchased goods-

(i) in the same form in which they were purchased, or

(ii) without doing anything to them which amounts to, or results, in a manufacture, 9[\* \*] and the word "re-sale" be construed accordingly; 10| .

11[Explanation - For the purposes of clauses (i), (ii) and (iii) of [sections 8, 9 and 10], a sale of purchased goods other than that declared goods, shall not be deemed to be a resale-

(i) if the seller holds a trade mark or a patent in respect of the goods, or if the seller holds a patent in respect of the method or process of manufacturing the goods sold; or method or process of manufacturing the goods sold; or

(ii) if the seller is entitled to use a trade mark or a patent in respect of the goods sold, or if the seller is entitled to use to use a patent

in respect of the method or process of manufacturing the goods sold.)

(27) "Rules" means rules made under this Act;

(28) "Sale" means a sale of goods made within the State for cash or deferred payment, or for any other valuable consideration, and includes any supply by a society, club or other association to its members on payment of a price or fees or subscription, but does not include a mortgage, hypothecation, charge or pledge; and the words "sell", "buy" and "purchase" with all their grammatical variations and cognate expressions, shall be construed accordingly;

12[Explanation - For the purposes of this clause-

(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in subsection (2) of section 4 of the Central Sales Tax Act, 1956;

(b)

(i) every disposal of goods referred to in the Explanation to clause (11);

(ii) a delivery of goods on hire-purchase or any system of payment by installments;

(iii) the supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given on or after the 2nd day of February 1983, for cash deferred payment or other valuable consideration;

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

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

(29) "Sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof, other than 2[the cost of insurance for transit or of installation], when such cost is separately charged; 3[Explanation 4[I]- For the purposes of this clause, the amount of duties levied or leviable on goods under the Central Excise and Salt Act, 1944, or the Customs Act, 1962 or the Bombay prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.] 4[Explanation II-

Sale price shall not include sales tax, 5[turnover tax, surcharge and resales tax] paid or payable by a person in respect of any such sale.] 6[Explanation HI- For the purposes of this clause, sale price shall include the amount received by the seller by way of deposit (whether refundable or not), which has been received whether by way of a separate agreement or not, in connection with or incidental to ancillary to, the said sale or the distribution of the said goods.]

(30) "Schedule" means a Schedule appended to this Act;

7[(30A) "SICOM" means the State Industrial and Investment Corporation of Maharashtra Limited, a Government Company registered under the Companies Act.]

(31) "State" means the 8[State of Maharashtra];

(32) "Tax" means the sales tax 9[purchase tax, 10[surcharge or resales tax]] as the case may be. payable under this Act;

11[(33) Taxable goods" means goods other than those on the sale or purchase of which no tax is payable under section 5 12[\* \*]]

(34) "Tribunal" means the Tribunal constituted under section 21 ;

(35) "Turnover of purchases" means the aggregate of amounts of purchase price paid and payable by a dealer in respect of any purchase of goods made by him during a given period, after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period;

(36) "Turnover of sales" means the aggregate of amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period, after deducting the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and 1 [includes,- (i) the amounts received or receivable during a given period, in respect of goods delivered on or after the commencement of the Bombay Sales Tax (Amending and Validating Provisions) Act, 1985 on hire-purchase or any system of payment by installments; and (ii) where the registration certificate is cancelled, the amounts, in respect of sales made before the date on which the cancellation becomes effective, received or receivable after such date; and]

3 These words were added by Mah. Tax Laws (Levy and Amendment) Act, 1988 (Act No. 9 of 1988) w.c.f. 1 - 7-1981.

1 These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

5 These words, letters and figures were substituted for the words,

brackets and figures "the date on which is the remaining provisions come into force under sub-section (3) of section 1" by Mali. 21 of 1962. s. 3( 1).

6 Clause (5A-1) inserted by Mah. Act XXI of 1998 w.c.f. 1-5-1998.

7 Clause (5A) was inserted by Mali. 62 of 1974, s. 8(a).

8 These words were inserted by Mah. 9 of 1989 w.e.f. 16.8.1985s. 14(1).

9 This portion was added by Mah. 9 of 1988, s.9 (c)(i). with effect from 1st July 1981.

10 This Explanation was added by Mah. 9 of 1988. s.9 (cl), with effect from IstJuly 1981.

11 Portion numbered as clause (i) by Mah. Act 19 of 1996. deemed to be business;]

1 Clause (ii) added and deemed to be added w.e.f. 15.1.1975 by Mah. Act 19 of 1996.

2 Sub-clauses (iii) and (iv) deemed to have been inserted w.c.f. 15.1.1975 by Mah. Act XXI of 1998.

3 Deemed to be inserted w.e.f. 24.5.1985 by Mah. 29 of 1994.

4 Substituted for the words "a State Government" by Mah. 21 of 1962, s.3{2).

5 The existing Exception renumbered as Exception 1 by Mah. 9 of 1989, si 14 (2)(a) w.e.f. 16.8.1985.

6 Exception II inserted by Mah. 9 of 1989 w.e.f. 16.8.1985.,

7 Explanation was added by Mah. 24 of 1985, s.2(9).

8 In the existing explanation, the portion beginning with the words "each of the following" and ending with the words "any State Government" was renumbered as clause (i) thereof, and after the said clause (i). clauses (ii) and (iii) were added by Mah. 9 of 1988, s.9 (d). w.e.f. 22.4.1988:

9 The words "including goods" inserted by Mah. 9 of 1989, s. 14 (2)(c)(1).

10 For the words "Scrap Material" these words substituted by Mah. 9 of 1989, s. 14 (2)(cii) w.e.f. 16.8.1985.

3 Now Motor Vehicles Act, 1988.

4 Clauses (i), (j) and (k) substituted for clause (i) by Mah. 9 of 1989 w.e.f. 1.4.1989.

5 Inserted and deemed to be inserted w.e.f. 1.4.1989 by Mah. ] 1 of 1992.

6 Clauses (ii) and (iii) added by Mah. Tax Laws (Levy and Amendment) Act. 1988 (9 of 1988) w.e.f. 22.4.1988.

7 Clause 11A inserted and deemed to be inserted w.e.f. 1.10.1993by Mah. 29of 1994.

- 9 Clause (12A) inserted by Mah. 15 of 1985, s.2(a).
- 1.Clause (12B) inserted by Mah. 15 of 1985, s.2(a).
- 2 Inserted and deemed to be inserted w.e.f. 1.10.1993 by Mah. 29 of 1994.
- 3 Inserted and deemed to be inserted w.c.f. 1.10.1993 by Mah. Tax Laws (Levy and Amendment) Act, 1995.
- 5 Clause (12C) inserted by Mah. 15 of 1985. s.2(a).
- 6 Clause (13) was substituted for the original by Mah. 62 of 1974, s.2(6).
- 7 Clauses (15) and (16) were deleted by Mah. 32 of 1981, s.2(9).
- 8 Substituted by Mah. 29 of 1994 w.c.f. 1.5.1994.
- 9 Inserted and deemed to be inserted by Mah. Act IX of 1996.
- 10 Clause (17) was inserted by Mah. 32 of 1981, s.2(6) w.e.f. 1.7.1981.
- 11 Substituted by Mah. 16 of 1963.
- 12 Explanation was added by Mah. 24 of 1990, w.e.f. 1.9.1990.
- 13 Explanation renumbered as Explanation I and Explanation II inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.
- 3 Clause (25A) inserted by Mah. 15 of 1985. s.2(6).
- 1 Substituted and deemed to have been substituted for the words "turnover tax and surcharge" by Mah. Act 22 of 2001 w.c.f. 1.4.2001. Earlier these words were inserted w.c.f. 1.4.1999 by Mah. 51 of 2000.
- 2 Clauses (23) and (24) were deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.
- 3 Clause (25A) inserted by Mah. 15 of 1985. s.2(6).
- 4 Substituted for the words and figures "section 7, 8. 9. 10. 12 and 13" by Mah. 32 of 1981, s.2(c).
- 5 Substituted for "7, 8, 8A. 9" by Mah. Tax Laws (Levy and Amendment) Act, 1995. Earlier to it 8A was inserted w.e.f. 22.4.1988 by Mah. 22 of 1988 and 9 was inserted by Mah. 11 of 1987.
- 9 The words "or (iii) being goods specified in any entry in Schedule B without doing anything to them which takes them out of the description thereof in the entry." were deemed to have been deleted with effect from 19.1.1976 by Mah. 9 of 1984, s.2.
- 10 Explanation which was inserted by Mah. 11 of 1992 (as amended by Mah. 18 of 1994) deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.
- 11 Explanation added by Mah. Act 25 of 1999, w.e.f. 1.4.1999.
- 12 Explanation substituted for the original by Mah. 24 of 1985.

- 1 Sub-clauses (iv) and (v) inserted by Mah. 24 of 1990, s.4(d).
- 2 Substituted for the words "the cost of freight or delivery or insurance for transit or installation" by Mah. 16 of 1963, s.2.
- 3 Explanation was added by Mah. 24 of 1990, s. 4(e).
- 4 Explanation renumbered as Explanation I and Explanation II inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.
- 4 Explanation renumbered as Explanation I and Explanation II inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.
- 5 Substituted and deemed to have been substituted w.e.f. 1.4.2001 for the words "turnover tax and surcharge" by Mah. Tax Laws (Levy and Amendment) Act, 2001. Earlier these words were inserted w.e.f. 1.4.1999 by Mah. 51 of 2000.
- 6 Added and deemed to have been added w.e.f. 1.4.1997 by Mah. 27 of 1999.
- 7 Clause (30A) was inserted by Mah. 15 of 1985, s.2(e).
- 8 Substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.
- 9 Substituted for the words "or purchase tax" by Mah. Act, 25 of 1999. Earlier these words were substituted by Mah. Tax Laws (Levy and Amendment) Act. 1995 w.e.f. 1.10.95.
- 10 Substituted and deemed to have been substituted w.e.f. 1.4.2001 for the words "or surcharge" by Mah. Tax Laws (Levy and Amendment) Act, 2001.
- 11 This clause was deemed to have been substituted w.e.f. 21 April 1987, by Mah. 22 of 1988, s.2(d).
- 12 The words "or under notification issued under section 41" deleted and deemed to be deleted w.e.f. 1.4.1997 by Mah. 11 of 1992 (As amended by Mah. XVIII of 1994).
- 1 This portion was added by Mah. 24 of 1985, s. 2(c).

## **CHAPTER 2** Incidence and Levy of Taxes

### **3. Incidence of tax :-**

- (1) Every dealer whose turnover either of all sales or all purchases, made during-
  - (i) the year ending on the 31st day of 1[March 1981], or
  - (ii) the year commencing on the 1st day of 2[April 1981], has exceeded or exceeds the relevant limit specified in sub-section (4), shall until such liability ceases under sub-section (3), be liable under this Act on his turnover of sales, and on his turnover of

purchases, made on or after the 3[notified day]:

Provided that, a dealer to whom sub-clause (i) does not apply but sub-clause (ii) applies 4[and whose turnover either of all sales or of all purchases) 5[does not exceed] the relevant limit specified in sub-section (4) after the 3[notified day] shall not be liable to pay tax in respect of sales and purchases which take place upto the time when his turnover of sales, or his turnover of purchases, as computed from the 1st day of 2[April 1981], 5[does not exceed] the relevant limit applicable to him under sub-section (4).

(2) Every dealer whose turnover either of all sales or all purchases, made during any year commencing on the 1st day of April being a year subsequent to the years mentioned in sub-section (1) 5[does not exceed] the relevant limit specified in sub-section (4), shall until such liability ceased under sub-section (3), be liable to pay tax under this Act with effect from the said date: Provided that, a dealer shall not be liable to pay tax in respect of such sales or purchases as take place during the period commencing from the 1st day of April of the said year upto the time when his turnover of sales, or his turnover of purchases, as computed from the 1st day of April the said year, does not exceed the relevant limit applicable to him under sub-section (4).

(3) Every dealer who has become liable to pay tax under this Act, shall continue to be so liable until his registration is duly cancelled; and upon such cancellation his liability to pay tax, already levied or leviable, shall until 10[his turnover of sales, or turnover of purchases] again first exceeds the relevant limit specified in sub-section (4), cease: Provided that, where a dealer becomes liable to pay tax in the same year in which he ceased to be liable as aforesaid then in respect of such sales and purchases as take place during the period commencing on the date of the cessation of liability of tax and 11[upto the time when] his turnover of sales or of purchases, 12[does not exceed] the relevant limit applicable to him under sub-section (4), no tax shall be payable.

(4) For the purposes of this section, the limits of turnover shall be as follows:-

(i) Limit of turnover Rs. 1,00,000 (a) in the case of a dealer who is an importer and the value of taxable goods sold or purchased by him during the year is not less than [Rs. 10,000] and the value of any goods whether taxable or not brought by him into the State or despatched to him from outside the State during the year is not less than Rs. 10,000 \Or Rs. 2,50,000

(b) in the case of a dealer who is a manufacturer and the value of



taxable goods sold or purchased by him during the year is not less than 13[Rs. 10,000] and the value of any goods whether taxable or not manufactured by him during the year is not less than 9 [Rs. 10,000). In any case (including the case where a dealer has not become liable to pay tax under clause (i)) where the value of taxable goods sold or purchased by the dealer during the year is not less than [Rs. 10,000].

(5) For the purpose of calculating the limit of turnover for liability of tax,-

(a) except as otherwise expressly provided the turnover of all sales or as the case may be, the turnover of all purchases shall be taken, whether such sales or purchases as taxable or not; and

(b) the turnover shall include all sales and purchases made by dealer on his own account and also on behalf of principals mentioned in his accounts.

1. Substituted for the word and figures "March 1959" by Mah. 32 of 1981, s.3(a)(i).

2. Substituted for the word and figures "April 1959" by Mah. 32 of 1981, s.3(a)(ii).

3. Substituted for the words "appointed day" by Mah. 32 of 1981, s.3(a)(iv).

4. This portion was inserted by Bom 69 of 1959 s. 2(l)(c).

5. For the words "first exceeds" the words "does not exceed" substituted by Mah. 9 of 1989. s. 15(a).

10. Substituted for the words "the limit of his turnover" by Bom 59 of 1959 s. 2(2).

11. Substituted for the words "ending on the date on which" by Mah. 9 of 1989.

12. Substituted for the words "first exceeds" by Mah. 9 of 1989 s. 15(6)(ii).

13. Substituted for the letter and figure "Rs. 5,000" by Man. Act XXI of 1998.

#### **4. Liability of dealer registered under Act No. LXXIV of 1956 to pay tax :-**

(1) Notwithstanding anything contained in section 3 , a dealer who is registered under the Section 3 of the Central Sales Tax Act, 1956 , but who is not liable to pay tax under the said section 3, shall nevertheless be liable to pay tax-

(a) on sales of goods in respect of the purchase of which he has furnished a declaration under sub-section (4) of Section 8 of the

Central Sales Tax Act, 1956 , and

(b) on sales of goods manufacture of which the goods so purchased have been used; and accordingly, the provisions of 1 Section 7 Section 8 S.8A of the Bombay Primary Education Act, 1923 Section 11 Section 11 apply to such sales, as they apply to the sales made by a dealer liable to pay tax under section 3 .

(2) Every dealer who is liable to pay tax under sub-section (1) shall for the purposes of Section 32 Section 33 Section 34 Section 35 Section 36 Section 37 Section 38 Section 46 Section 47 , be deemed to be a registered dealer.

1. Substituted for the letter and figure "Rs. 1,25,000" by Man. Aet XXI of 1998.

## **5. Sales and purchases of certain goods free from all taxes :-**

(1) Notwithstanding anything contained in this Act, but subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in that Schedule.

(2) The State Government may, by notification in the Official Gazette, add to. or enlarge, any entry in Schedule A, or relax or omit any condition or exception specified therein; and thereupon, the said Schedule shall be deemed to be -1 [amended accordingly; and the amendment so made shall take effect from the date of the publication of the notification in the Official Gazette, or from such other date as may be mentioned therein.

1. Substituted for the words and figures "section 7, 8. 11 and 12" by Mali. 9 of 1988 s. 10.

## **6. Taxes payable by a dealer :-**

:- Subject to the provisions of this Act and to any rules made thereunder, there shall be paid by every dealer, who is liable to pay tax under this Act, the tax or taxes leviable in accordance with the provisions of this Chapter.

## **7. Levy of sales tax on Declared goods specified in Schedule B :-**

5(1) There shall be levied a sales tax, on the turnover of sales of Declared goods specified in Schedule B, at the rate set out against each of them in column 3 thereof, but after deducting from such

turnover -

(i) resales of goods 6[other than those covered by entry 6 of Schedule B]on the purchases of which the dealer is liable to pay purchase tax under section 14;

(ii) resales of goods 7[other than those covered by entry 6 of Schedule B] purchased by a dealer on or after the appointed day from a Registered dealer, otherwise than on a declaration furnished under section 11 or 12 if the requirements of section 12A are satisfied;

(iii) resales of goods 2[other than those covered by entry 6 of Schedule B] purchased by a dealer on or after the appointed day liable to pay tax under section 4, if a certificate is provided in sub-section (2) of section 12A is furnished; and

1(iv) sales of goods to a Commission agent holding a Permit who purchases on behalf of a principal, upon such Commission agent furnishing a declaration as provided in section 12.)

2[(v)sales of goods to a dealer holding a Certificate of Entitlement, who purchases such goods by furnishing a declaration as provided in clause (g) of section 12.1

4 [(3) In order to ensure that after the date of coming into force of section 15 of the Central Sales Tax Act, 1956, tax shall not be levied on the sales or purchases of Declared goods at more than one stage, it is hereby provided that if under this Act or any earlier law, any tax is leviable on the sale or purchase of such goods, then no further tax shall be levied under this Act on any subsequent sale or purchase thereof; and accordingly, for the purpose of arriving at the taxable turnover of sales, or as the case may be, of purchases, of a dealer, there shall be deducted from his total turnover of sales or as the case may be, of purchases, such sales or purchases of such Declared goods on which tax has become leviable at any earlier stage.]

5 Substituted for the v/ords "amended accordingly" by Mali. 29 of 1965 s.2.

6 Section 7 was substituted by Mah. 32 ot1981,s.5.

7. Inserted by Mali. Tax Laws (Levy and Amendment) Act. 2002 with effect from the dateto be notified.

2 Clause (v) added and deemed to be added w.c.f. 15.5.1997 by Mah. Act XXI of 1998.

1 Substituted by Mah. 29 of 1994 w.e.f. 1.5.1994.

2 Clause (v) added and deemed to be added w.c.f. 15.5.1997 by Mah. Act XXI of 1998.

3 Sub-section (2) was deleted with effect from the date to be

notified by Mah. Tax Laws (I.cvy and Amendment) Act. 2002.

4 Sub-section (3) of section 7 as it stood during the period from 1st January 1960 to 30th June 1981 (both days inclusive) revived and re-enacted, with certain modifications, during the said period.

## **8. Single point of levy of sales tax on goods specified in Schedule C :-**

23[(1)] There shall be levied a sales tax, on the turnover of sales of goods specified in Schedule C, at (he rate set out against each of them in column 3 thereof, but after deducting from such tu mover- (i) resales of goods on the purchase of which the dealer is liable to pay purchase tax under section 14;

(ii) resales of goods 4[except those covered by en tries 20 and 22 of part II of Schedule C,] purchased by a dealer on or after the appointed day from a Registered dealer, otherwise than on a declaration furnished under section 11 or 12 if the requirements of section 12A are satisfied:

"(Provided that, resales of goods purchased by the dealer from a Registered dealer during the period commencing on the 1st July 1981 and ending on the clay immediately preceding the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 1988, on a declaration furnished under section 8A shall not be deducted from such turnover.]

(iii) resales of goods purchased by a dealer on or after the appointed day from a dealer liable to pay tax under section 4, if a certificate is provided in sub-section (2) of section 12A is furnished; and

10[(iv) sales of goods to a Commission agent holding a Permit who purchases on behalf of a principal, upon such Commission agent furnishing a declaration as provided in section 12.)

6[(v) sales of goods to a dealer holding a Certificate of Entitlement, who purchases such goods by furnishing a declaration as provided in clause (g) of section 12.]

7[(2) , , .] 8 [Explanation - For the purposes of this section the expression "resale of goods" means the resale of those goods on the sale of which tax was leviable under this section at the time of their purchase.]

2. Renumbered as sub-section (1) by Mah. 22 of 1997 w.e.f. 28.1.1997.1999. Earlier these words were substituted by Mah. Tax Laws (Levy and Amendment) Act, 1995 with effect from 1.10.1995.

3. Added by Mah. Act 25 of 1999. by Mah.22 of 1997 w.e.f.

28.1.1997.

4. Second proviso deleted by Mah. Act 22 of 1997. Second proviso deleted by Mah. Act 22 of 1997.

5. Substituted by Mah. 29 of 1994 w.e.f. 1.5.1994.

6. Clause (v) added and deemed to be added w.e.f. 15.5.1997 by Mah. Act XXI of 1998.

7. Sub-section (2) deleted by Mah. 21 of 1998.

8. Added and deemed to have always been added by Mah. Act 17 of 1999.

**8A.** Power To Specify Point Of Sale At Which Goods May Be Taxed :-

(1) Notwithstanding anything contained in this Act, but subject to the condition of previous publication, the State Government may, by notification in the Official Gazette, and subject to such conditions, if any, as may be stated therein, specify the point of sale at which any goods or class of goods, except Declared goods, may be taxed, and on the issue of any such notification, such goods or class of goods, shall be exempt from the levy of tax under section 8.

(2) There shall be levied a sales tax on the turnover of sales of goods specified in Schedule C and notified under sub-section (1), at the rate set out against each of them in column 3 of the said Schedule, but after deducting from such turnover-

1[(a) sales of goods to a Commission agent holding a Permit who purchases on behalf of a principal, upon such Commission agent furnishing a declaration as provided in section 12;]

(b) sales of goods to a Registered dealer, who certifies in the prescribed declaration that the goods purchased by him are intended for sale by him.]

1. Substituted by Mah. 29 of 1994 w.c.f. 1.5.1994.

2. Sub-section (3) by Mah. Act XXI of 1998.

**8B.** Provision Of Section 8A Not To Apply To Declared Goods :-

1 .:- Nothing in section 8A as it existed before the commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 1988, shall apply or shall be deemed ever to have applied to Declared goods during the period commencing on the 1st July 1981 and ending on the day immediately preceding the date of such commencement.]

1. Section 8B was substituted by Mah. 19 of 1988, s. 15.

**8C.** Deduction Of Resales During Pendency Of Application By Dealer For Grant Of Patent Or Registration Of Trade Mark :-

1 [:-. Notwithstanding anything contained in clause (26) of section 2, as it stood during the period commencing on the 22nd April 1988 and ending on the 30th September 1995, deduction under clauses (i), (ii) and (iii) of section 8 in respect of a sale of purchased goods effected during the said period shall not be disallowed only on the ground that the selling dealer had applied for grant of patent or for registration of trade mark, not being an application for the renewal of the trade mark, in respect of the goods sold.]

1. Section 8C was substituted by Mah, 19of 1996 w.c.f.29.6.1996.

**8D.** Section 8D :-

[Deleted]\* \*1 )

1. Section 8D deleted and deemed to have been deleted w.e.f. 14.11.2000 by Mali. Act 16of2002.

**9.** Levy of turnover tax on goods specified in Schedule C :-

There shall be levied a turnover tax, on the turnover of sales of goods specified in Schedule C, at the rate of one per cent taut after deducting from such turnover-1[

(a) resales of goods on the purchase of which the dealer is liable to pay purchase tax under section 14;

(b) resales of goods purchased by a dealer from a Registered dealer, otherwise than on a declaration furnished under section 11 or 12 if the requirements of section 12A are satisfied:

(c) resales of goods purchased by a dealer liable to pay tax under section 4, if a certificate is provided in sub-section (2) of section 12A is furnished; and

(d) sales or resales of goods in respect of which a notification under Section 8A is issued, to a 2 [Provided that, where in respect of any period starting on or after the 1st day of May 2002, the tax liability of any dealer-

(a) has exceeded rupees one crore in the immediately previous year, or

(b) exceeds rupees one crore in the said period, then the Turnover

tax shall be levied at the rate of one and half per cent; from the day of the said period or, as the case may be, from the day the tax liability exceeds rupees one crore. Explanation - For the purposes of this section, the expression "tax liability" shall mean the sales tax and purchase tax levied or leviable, without adjustment of any draw-back, set-off or as the case may be, refund, granted in accordance with the provisions of section 42 or the rules.]

1. Section 9 inserted by Mah. Act 25 of 1999. Earlier section was deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

2. Proviso added w.e.f. 1.5.2002 by Mah. Tax Laws (Levy and Amendment) Act, 2002 w.e.f. 1.5.2002.

### **10. Levy of resale tax on goods specified in Schedule C :-**

There shall be levied a Resale Tax at the rate of 0.5 per cent, on the turnover of resale of goods specified in Schedule Council where the goods resold were purchased from a registered dealer, after deducting from such turnover-

(i) the turnover of sales of goods covered by any notification issued under section 8A;

(ii) the turnover of sales of goods against whom the rate of sales tax specified in column 3 of the said Schedule is less than four per cent;

(iii) the turnover of sales of goods which are liable for payment of sales tax at a rate less than four per cent; by virtue of the notification issued under section 41 and which goods are specified in Group A of the said notification;

(iv) the resale of goods covered by Entry 37 in Part II of Schedule C;

(v) the turnover of sales of goods, as may be notified, from time to time, by the State Government in the Official Gazette -

(a) against whom the rate of sales tax specified in column 3 of the said Schedule is four per cent: or

(b) which are liable for payment of sales tax at the rate of 4 per cent, by virtue of the notification issued under section 41 and which goods are specified in Group A of the said notification.]

1. Section 10 substituted by Mah. Tax Laws (Levy and Amendment) Act, 2002 w.e.f. 1.5.2002.

### **10A. Exclusion Of Certain Purchases For Purposes Of Deductions Under Sections 7, 8 And 9 :-**

For the purpose of deducting from the turnover of sales the resales of goods purchased from a Registered dealer, under 2[sections 3[7,

8 and 9]] the expression "goods purchased from a Registered dealer" shall not include the goods the purchase of which is not liable to tax by virtue of the provisions of section 75.]1

2 Substituted by Mah. Tax Laws (Levy and Amendment) Act, 1995 for the words and figures "sections 7, 8 and 9" which were earlier substituted by Act 28 of 1986 for the words and figures "section 7 or 8".

3 Substituted by the figures and word "7 and 8" by Mah. Act 15 of 1999.

1 Section 10A was inserted by Mah. 62 of 1974, s.3.

### **11. Tax payable at reduced rate on certain sales :-**

:- .Where any dealer is liable to pay tax under, this Act, sells any taxable goods,-

(1) To an authorised dealer, who certifies in the prescribed declaration form,-

(a) that the goods will be dispatched in the same form in which they were purchased and without doing anything to them, which might amount to or result in manufacture thereof, or will be used for packing of the goods which will be so dispatched, within six months from the date of purchase, to his own place of business outside the State for sale or for use in the manufacture of goods for sale outside the State or for use in the packing of the goods so manufactured; and

(b) that in respect of the said place of business he or his manager or agent at that place is a Registered dealer under the Central Sales Tax Act, 1956 ;

(2) To a Commission agent holding a Permit, who certifies in the prescribed declaration form-

(a) that he is registered under the Central Sales Tax Act, 1956 ; and

(b) that the goods are purchased by him as Commission agent for his principal who is-

(i) Central Government and that goods will be despatched on behalf of such Government outside the State; or

(ii) a dealer whose place of business is outside the State and, who is registered for that place under the Central Sales Tax Act, 1956 and that the goods will be sold or will be used in the manufacture of goods for the sale outside the State by the principal or will be used



in the packing of the goods so manufactured by the principal; or  
(iii) a Registered dealer having a place of business also outside the State and that such principal or his manager or agent is a Registered dealer under the Central Sales Tax Act, 1956 and that the goods will be sold or will be used in the manufacture of goods for the sale outside the State by such principal or will be used in the packing of the goods so manufactured by the principal; and  
(c) that the goods will be dispatched outside the State within six months from the date of their

1[(3) To an authorised dealer, who certifies in the prescribed declaration that the goods (other than the goods used for the packing of goods manufactured by him) are purchased for resale in the course of inter-State trade or commerce or in the resale in the export out of the territory of India or for packing of goods meant for the resale in the course of inter-State trade or commerce or in the course of export out of the territory of India and such goods will be resold by himself or by another authorised dealer to whom he resells the goods within nine months or will be so used within nine months from the date of such purchase by himself or by another Authorised dealer to whom he resells the goods, in the packing of such goods;

(4) To a Commission agent holding a Permit, who certifies in the prescribed declaration that the goods (other than the goods used for the packing of goods manufactured by his principal) are purchased on behalf of his principal who is an Authorised dealer and the goods will be resold by the principal in the course of inter-State trade or commerce or in the course of export out of the territory of India and that goods will be sold, resold or so used in the packing of such goods within nine months from the date of their purchase by the Commission agent and the Commission agent would obtain a declaration in the prescribed form from his principal to the aforesaid effect; 2 [ , , ]

1. Clauses 3 to 6 inserted by Mah. 29 of 1994 w.e.f. 1.5.1994.

2. Clause (5) and (6) deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

## **12. No deduction from turnover except on declarations :-**

There shall not be deducted from the turnover of sales, sales of goods 4[\* \*] to a Commission agent holding a Permit purchasing on behalf of his principal, 5[or to a Registered dealer or to a dealer holding a Certificate of Entitlement as provided in sections 7, 8 and

8 A ] unless- 6[ .] (e) the Commission agent certifies In the prescribed declaration form-

- (i) that he is registered under the Central Sales Tax Act, 1956;
- (ii) that his principal is registered under the Central Sales Tax Act, 1956 for his place of business outside the State;
- (iii) that the goods are purchased by him for his principal for the purpose of complying with the pre-existing agreement or order for sale entered into by such principal for or in relation to an export out of the territory of India by such principal himself or for packing of goods for such export and that such goods will be so exported by such principal or will be so used in the packing of such goods; and
- (iv) that he would obtain a declaration in the prescribed form from such principal to the - aforesaid effect;]

7[(f) the Registered dealer certifies in the prescribed declaration form that the goods purchased by him are intended for sale by him.]

8 [(g) the dealer holding a Certificate of Entitlement certifies in the prescribed declaration form-

- (i) that the goods purchased by him are raw material within the meaning of Explanation II to rule 31B of the rules,
- (ii) that the goods are purchased by him for use in manufacture of goods for sale which are specified in the Eligibility Certificate which will in fact be soused and sold by him or used in packing of goods so manufactured.)

3 Substituted by Mah. 32 of 1981, s. 12.

4 The words "to an Authorised dealer or a Registered dealer or" deleted by Mah. 29 of 1994 w.c.f. 1.5.1994.

5 Substituted and deemed to have been substituted w.e.f. 1.7.1981 by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.5.1994 for the words and figures "as provided in sections 7 and 8".

6 Dclcted by Mah. 29 of 1994 w.c.f. 1.4.1994.

7 Clause (I) added and deemed to have been added w.e.f. 1.7.1981 by Mah. llof 1992.

8 Clause (g) added by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1977.

**12A.** No Deduction From Turnover Of Certain Sales Except On A Certificate :-

1[(1) There shall not be deducted from the turnover of sales, resales of goods purchased by a dealer after the commencement of the Bombay Sales Tax (Amendment) Act, 1965, from a Registered

2[sections 3[7, 8 and 9)] \*\* 4[unless the dealer claiming deduction produces a bill or cash memorandum containing a certificate that the registration certificate of the selling dealer was in force on the date of sale of the goods to him. Such certificates shall be signed by the selling dealer or a person duly authorised by him in this behalf:

5[Provided that, where the certificate of registration of the selling dealer has been cancelled with effect from the date anterior to the date of the cancellation order, and such sale was made on or after such anterior date of cancellation, then subject to the provisions of sub-section (7) of section 22, the certificate signed as aforesaid shall be deemed to be invalid and to have been invalid on the date of such sale; and accordingly no deduction from the turnover of sales shall be allowed to the claimant dealer in respect of such resales.]

6[(2) There: shall not be deducted from the turnover of sales, resales of goods purchased by a dealer from a dealer registered under the Central Sales Tax Act, 1956 and who is liable to pay tax under Section 4 , as provided in Section 6 Section 7 Section 8 Section 9 ] ) \* \* unless the dealer claiming deduction produces a bill or cash memorandum containing a certificate that the selling dealer is liable to pay tax under section 4, on the sale of goods to him and that the said sales is in the course of business of the selling dealer. Such certificate shall be signed either by the selling dealer himself or by a person duly authorised by him in this behalf.]

7 [(3) Notwithstanding anything contained in sections 8 and 9, no deduction from the turnover of sales as provided in that section shall be allowed to any dealer in respect of the supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any non-alcoholic drink, covered by entry 15, in Part II of Schedule C, where such supply is made or given for cash, deferred payment or other valuable considerations.]

1. Section 12A was renumbered as sub-section (1) of that section by Mah. 32 of 1981, s. 13(1).

2. The words "sections 7. 8 and 9" were substituted for the words and figures "sections 7 and 8" by Mah. 11 of 1987, s.3(a).

3. Substituted for the words and figures "7 and 8" by Man. Act 25 of 1999.

4. The figure and letter "8A" was deleted by Man. 9 of 1988. s. 18(i).

5. Proviso added by Mah. 11 of 1992 as amended by Mali, xviii of

1944 w.e.f. the date to be notified by the State Government.

6. Sub-section (2), was added by Mah. 32 of 1981, s. 13(3).

7. Sub-section (3) substituted for (3), (3A) and (4) by Mah. Act 25 of 1999.

**12B.** On An Alter Specified Dates Certain Prescribed Forms To Be Obtained From Prescribed Authority :-

The State Government may, by notification in the Official Gazette, direct that on and after such date as may be specified therein, the form of 2[any of the certificates or declarations under section 11 or section 12 or under any notification issued under section 41] 3 [or under any rule] shall be obtained from the prescribed authority subject to the conditions prescribed in that behalf.] , During the period from 15.1.1975 to 31.3.1989 Section 13 as it then existed deemed to have been validly re-enacted by Man. Act 19 of 1996 with certain changes.

1. Section 1213 inserted by Mali. 29 of 1965. s.9.

2. These words and figures substituted by Mah. 11 of 1991 w.c.f. 1.4.1991.

3. Inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

**13. Purchase tax payable on certain purchases of goods :-**

1[ (1) Where a dealer, who is liable to pay tax under the provisions of this Act, purchases any goods specified in Schedule B or C from a person or a Government, who or which is not a 2[dealer or a dealer who is not

(2) Subject to the provisions contained in sub-section (1), where a dealer, who is liable to pay tax under the provisions of this Act, purchases any goods specified in Schedule B or C from a person or a Government, who or which is not a 3 [dealer or a dealer who is not Registered dealer) then unless the goods so purchased are resold by a dealer, there shall be levied, subject to the provisions of sub-section (2) of section 7, a purchase tax on the turnover of such purchases at the rate set out against each of such goods in the Schedules aforesaid.

Explanation - For the purposes of this section, the term "capital assets" shall have the same meaning as assigned to it in the Income Tax Act, 1961 .]

1. Section 13 substituted by Mah. 9 of 1989.
2. Substituted and deemed to have been substituted w.c.f. 1.4.1989 for the words "Registered dealer" by Mah. Act 19 of 1996.
3. Substituted and deemed to have been substituted w.e.f. 1.4.1989 for the words "Registered dealer" by Mah. Act 19 of 1996.

**13A.** Levy Of Purchase Tax In Certain Cases :-

1 [ Where a dealer, holding a Certificate of Entitlement, purchases any goods on a declaration referred to in clause (g) of section 12, there shall be levied a purchase tax on the turnover of such purchases at such rate not exceeding four per cent, as may be prescribed and different rates may be prescribed for different classes of dealers.)

1. Inserted by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.

**13AA.** Purchase Tax Payable On Goods In Schedule C. Part 1, When Manufactured Goods Are Transferred To Branches :-

[ Where a dealer, who is liable to pay tax under this Act, purchases any goods specified in Part I of the Schedule C, directly or through a Commission agent, from any person and uses such goods in the manufacture of taxable goods and dispatches the goods, so manufactured, to his own place of business or his agent's place of business situated outside the State within India, then such dealer shall be liable to pay, in addition to the sales tax paid or payable, if any, or, as the case may be, the purchase tax levied or leviable, if any, under the other provisions of this Act in respect of purchases of such goods, a purchase tax at the rate of two per cent on the purchase price of the goods so used in the manufacture, and accordingly the dealer shall include purchase price of such goods in the turnover of purchases in his return under section 32, which he is to furnish next thereafter.)

1 . Section 13AA substituted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

**13B.** Purchase Tax Payable On Specified Goods :-

(1) Notwithstanding anything contained in this Act, but subject to the condition of previous publication the State Government may, by notification in the Official Gazette, specify the goods or classes of goods (hereinafter referred to in this section as "the specified goods") in respect of which purchase tax shall be levied on the

turnover of purchase of the specified goods effected by a dealer liable to pay tax under this Act at the rate of purchase tax leviable in respect of the specified goods under Schedule B or Schedule C, as the case may be, unless such purchased goods are resold by such dealer: 2[ .

(2) Where the specified goods are Declared goods, purchase tax leviable under sub-section (1) shall be subject to the provisions of sub-section (2) of section 7.

(3) On issue of the notification under sub-section (1), nothing in section 7, 8 1 [or 13] shall apply to the sale or purchase, as the case may be, of the specified goods.]

1. Section 13B was inserted by Mah. 16 of 1982 s.4.

2. Proviso deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995. Substituted for the figures and letters "13 or 13A" by Mah. Tax Laws (Levy and Amendment) Act, 1995.

#### **14. Liability to purchase tax for contravention of terms of declaration :-**

3(1)Where any dealer or a Commission agent has purchased any taxable goods either before or after the notified day, under a certificate or declaration given by him under section 8A, 11 or 12 and the conditions, recitals and undertakings of such certificate or declaration are not complied with then

1[Provided that, where a dealer, holding a Certificate of Entitlement, has purchased goods directly or through a Commission agent, under a declaration given by him under section 12 and has used them in the manufacture, and contrary to the recital of such declaration dispatched the goods so manufactured to his own place of business or his agents place of business situated outside the State within India, where he or, as the case may be, his agent is registered under the Central Sales Tax Act, 1956 . then the rate of purchase tax shall be six per cent.] Provided further that, where purchase tax is payable by a dealer under this sub-section by reason of the fact that he has failed to comply with the conditions, recitals or undertakings of such declaration issued under section 11 or 12, then an amount equal to the tax paid or payable under section 11 2[or, as the case may be, the purchase tax paid or payable under section 13A] :i|\* \*] shall be set-off against purchase tax so payable.

4[(1A) Where any person or dealer not entitled to issue any declaration prescribed under the provisions of section 8A, 11 or 12, purchases any taxable goods by issuing such declaration, then without prejudice to the other provisions of this Act, such person or dealer shall be liable to pay purchase tax on the purchase price of such goods and the purchase tax shall be levied at the set out against each of such goods in column 4 of Schedule Band C and accordingly he shall include the purchase price thereof in his turnover of purchases in his return under section 32 which he is to furnish next thereafter:

Provided that, if the dealer liable to pay purchase tax as aforesaid has been assessed to such purchase tax and if he has paid such tax, then the dealer from whom such goods are purchased shall be exempted from payment of tax on sales of such goods to the extent such purchase tax has been paid.]

(2) If, in respect of any transaction by a Commission agent made under a declaration given by him under section 11 or 12, the Commission agent-

(a) purchases the goods at one rate, and passes them on to his principal at an increased rate (such increase not being by reason only of his commission or packing, carriage, freight or insurance of the goods and other reasonable charges incidental to their dispatch or charged according to trade practice); or

(b) acts for non-existent principal; or

5[(c) fails to obtain from his principal a declaration as required under clause (2) or clause (4-) or as the case may be, clause (6) of section 11 or under clause (e) of section 12; the Commission agent shall be liable to pay purchase tax on the purchase price of the goods so purchased and the purchase tax shall be levied at the set out against each of such goods in column 4 of Schedule B and C and accordingly he shall-include the purchase price thereof in his turnover of purchases in his return under section 32 which he is to furnish next thereafter:

5 [Provided that, where such purchases are made by furnishing a declaration issued under section 11, an amount equal to the tax paid under section 11 shall be set-off against purchase tax so payable.]

(3) If any question arises as to whether the purchase price of goods purchased under a declaration given under section 8A, 11 or 12, is or not liable to be included, in the turnover of purchases of a dealer or Commission agent under this section the burden of proving that it shall not be liable to be so included shall be upon such dealer or,

as the case may be, the Commission agent.]

3 Section 14 was substituted by Mah. 32 of 1981, s. 16.

1 Proviso added by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.

2 Inserted and deemed to have been inserted w.e.f. 15.1.1997 by Mah. Tax Laws (Levy and Amendment) Act. 2000.

4 Sub-section (1 A) as inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992.

5 Substituted by Mah. 29 of 1994 w.e.f. 1.5.1994.

5 Substituted by Mah. 29 of 1994 w.e.f. 1.5.1994.

### **15. Liability to purchase tax on certain stocks of goods :-**

(1) Where a dealer is liable to pay tax under this Act,-

(a) dies, or

(b) transfers or otherwise disposes of his business, or effects any change in the ownership thereof, or

(c) is a firm, company, society or other association of persons, or a trust, which is dissolved, liquidated, wound up or revoked, or

(d) is a Hindu undivided family, and the family is partitioned, or

(e) discontinues his business, and the stock of goods held by such dealer immediately before the death, transfer, disposal, change, dissolution, liquidation, winding up, revocation, partition or discontinuance, 1[as the case may be, includes taxable goods purchased by him on a certificate given by him under section 11 or 12, then there shall be levied a purchase tax on the purchase price of such taxable goods at the relevant rate of purchase tax applicable thereto as if such dealer had become liable to pay purchase tax on such goods under section 14;]

Provided that, where the business carried on by such dealer is continued after such death, transfer, disposal, change, dissolution, liquidation, winding up, revocation, partition or as the case may be, the person carrying on such business shall be liable to pay purchase tax 2[in respect of the stock of taxable goods purchased by such dealer, under section 13, or as the case may be section 13AA,] 3[if the goods are not resold by such person]:]

Provided further that, if the person carrying on such business shows to the satisfaction of the Commissioner that-

(a) any taxable goods purchased by such dealer on a certificate given by him under section 11 or 12 have been used for the purpose certified or, as the case may be, resold or dispatched in the manner and within the period certified, or



4[(b) any goods purchased by such dealer have been resold by such person.]

5 [section 14].

1. This portion was substituted for the portion beginning with the words "as the case may be includes" and ending with the words "no purchase tax shall be levied under this section" by Man. 29 of 1965, s. 11.

2. Substituted for the portion beginning with the words "under section" and ending with the words "Registered dealer" by Man. 24 of 1990. s. 6(a) w.e.f. 1.9.1990.

3. Substituted for the portion beginning with the words "if the goods are disposed of and ending with the words "of section 13;" by Mah. 62 of 1974, s.6(a).

4. Clause (b) substituted by Mah. 24 of 1990, s. 6(b) w.e.f. 1.9.1990.

5. Substituted for the word and figures "section 13" by Mah. 16 of 1982 s.4(2).

**15A.** Levy Of Surcharge :-

In the case of a dealer liable to pay tax under any provisions of this Act, the tax payable before adjustment of any set-off, drawback or refund on sales and purchases made by him at the rates of sales tax or purchase tax, as the case may be, shall be increased by the levy of surcharge at the rate often per cent of the tax so payable: Provided that, in calculating the surcharge payable by the dealer, the tax payable under the other provisions of this Act in respect of sales or purchases of Declared goods shall not be taken into consideration.

Explanation - For the purposes of this section, tax payable means the aggregate of the following: -

(a) in case of sales or purchases of goods exempted in part or full from the payment of any tax u/s 41, the sales tax and purchase tax paid or payable;

(b) in any other case, the sales tax and purchase tax levied or leviable, without adjustment of drawback, any set-off or as the case may be, refund granted in accordance with the provisions of section 42 or the rules.]

1. Section 15-1-Substituted and deemed to have been substituted w.e.f. 1.4.2001 by Mah. Tax Laws (Levy and Amendment) Act, 2001.

## **16. Commission agent liable to tax for sales on behalf of principal :-**

:-

(1) Where a Commission agent sells any taxable goods on behalf of his principal, such Commission agent and his principal shall both be jointly and severally liable to pay the tax or taxes on the turnover of such sales under section 6.

(2) If the principal, on whose behalf the Commission agent has sold goods, shows to the satisfaction of the Commissioner that the tax has been paid by him Commission agent on such goods under sub-section (1). the principal shall not be liable to pay the tax again in respect of the same transaction.

## **17. Power to reduce rate of tax and to amend Schedules :-**

The State Government may, by notification in the Official Gazette, reduce any rate of tax specified in Schedule B or C in respect of any entry (or part thereof) in the said Schedules, and may, by like notification-

(a) omit or amend any entry (or part thereof) but, not so as to enhance the rate of tax in any case;

(b) transpose any entry by deleting it from one of the Schedules and inserting it in or adding it to another; and thereupon the Schedule shall be deemed to have been amended accordingly: Provided that, no notification which transposes any entry from one Schedule to another as aforesaid, shall be issued by the State Government unless it has been laid in draft before the 1[Maharashtra] Legislative Assembly and has been approved by resolution of that Assembly; and upon such approval, the notification may be issued and shall take effect in the form in which it is so approved. 2 [Any notification issued in this section shall take effect from the date of the publication thereof in the Official Gazette or from such other date as may be mentioned therein.]

1. Substituted for the word "Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

2. This portion was added by Mah. 29 of 1965, s. 12.

## **17A. No Deductions Under Sections 8 And 9 In Certain Cases :-**

1[ Where any entry (or part thereof) is transposed whether under section 17 or otherwise, by its deletion from one of the Schedules and insertion in or addition to another Schedule, then if no tax on any sale or purchase of the goods specified in that entry (or part

thereof) is leviable, the deductions provided in 2[clause (ii) or clause (iii) of section 8, 3[and in clause (b) or clause (c) of sub-section (1) of section 9] 4 [\* \*] shall not apply to the resale of those goods.]

1. Section 17A was inserted by Mah. 21 of 1962, s.10. Substituted for the word and figure "section 8" by Mah. Act 25 of 1999.

2. Substituted for the words "clause (ii) of section" by Mah. 11 of 1987, s.4(a).

3. Inserted by Mah. Act 25 of 1999.

4. The words, brackets and figures "or clause (ii) of sub-section (1) of section 9, or as the case may be. clause(ii) of sub-section (1) of section 10 or clause (i) of sub-section (1) of that section" were deleted by Mah. 32 of 1981, s.19(a).

### **18. Liability of firms :-**

Notwithstanding any contract to the contrary, where any firm is liable, to pay tax under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment:

Provided that, where any such partner retires from the firm, he shall be liable to pay 1 [the tax, penalty and the interest](if any) remaining unpaid at the time of his retirement, any tax due up to the date of retirement though unassessed at that date.

1. Substituted for the words "the tax and the penalty" by Mah. 32 of 1981.

### **19. Special provision regarding liability to pay tax in certain cases :-**

:-

(1) Where a

(a) if the business carried on by such dealer is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax [(including any penalty and interest)] due from such dealer under this Act or under earlier law 1[in the like manner and to the same extent as the deceased dealer], and

(b) if the business carried on by such dealer is 2[discontinued whether before or after his death], his legal representative shall be liable to pay out of the estate of the deceased, 3[in the like manner and to the same extent as the deceased dealer would have been

liable to pay if he had not died], the tax 4[(including any penalty and interest)] due from such dealer under this Act or under earlier law, whether such tax 5[(including any penalty and interest)] has been assessed before his death but has remained unpaid, or is assessed after his death. 6[Explanation - In this sub-section, the expression "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.]

(2) Where a dealer, liable to pay tax under this Act, is a Hindu undivided family and the joint family property is partitioned amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax 7[(including any penalty and interest)] due from such dealer under this Act or under earlier law up to the time of partition, whether such tax 8[(including any penalty and interest)] has been assessed before his death but has remained unpaid, or is assessed after partition.

(3) Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under section 18, the tax 8[(including any penalty and interest)] due from the firm under this Act or under earlier law up to the time of dissolution, whether such tax 8[(including any penalty and interest)] has been assessed before such dissolution but has remained unpaid, or is assessed" after dissolution.

(4) Where a dealer, liable to pay tax under this Act, transfers or otherwise disposes of his business in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in business or part thereof by any other person, the dealer and the person succeeding shall jointly and severally be liable to pay the tax 8[(including any penalty and interest)] due from the dealer under this Act or under earlier law up to the time of such transfer, disposal or change, whether such tax including any penalty and interest has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter.

(5) Where a dealer, liable to pay tax under this Act,-

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian, or

(b) are trustees who carry on the business under a trust for a beneficiary, then if the guardianship or trust is terminated, the ward or as the case may be, the beneficiary shall be liable to pay the tax 12[(including any penalty and interest)] due from the

dealer up to the time of the termination of guardianship or trust, whether such tax 9[(including any penalty and interest)] has been assessed before such termination but has remained unpaid, or is assessed thereafter.

(6) Where a dealer, liable to pay tax under this Act, is succeeded in business by any person in the manner described in clause (a) of sub-section (1) or in sub-section (4), then such person shall, notwithstanding anything contained in section 3, be liable to pay tax on the sales or purchases of goods made by him on and after the date of such succession, and shall (unless he already holds a certificate of registration) [within sixty days] thereof apply for registration: Provided that, where such person resells any goods purchased by the dealer while carrying on business before such succession, he shall be entitled to such deductions in respect thereof as are premissible under section 5 [7, 8 or 9] as the case may be, had the resale been effected by the dealer himself.

1. Inserted by Mah. 42 of 1971, s.3(a).

2. Substituted for the words "discontinued after his death" by Mah. 42 of 1971, s.3(b)(i).

3. Substituted for the words "to the extent to which the estate is capable of meeting the charge" by Mah. 42 of 1971, s.3(b)(i).

4. Substituted for the brackets and words "(including any penalty)" by Mah. 11 of 1987, s.6(a).

5. Substituted for the words and figures "Section 7 or 8" by Mali. Act 25 of 1999.

6. Substituted by Mah. 42 of 1971.

7. Substituted for the brackets and words "(including any penalty)" by Mah. 11 of 1987, s.6(a).

8. Inserted by Mah. 11 of 1987.

12. Substituted for the words "within thirty days" by Mah. 29 of 1994 w.e.f. 1.5.1994.

### **CHAPTER 3** Sales Tax Authorities and Tribunal

#### **20. Sales Tax Authorities :-**

:-

(1) For carrying out the purposes of this Act, the State Government shall appoint an officer to be called the Commissioner of Sales Tax.

(2) 1[Likewise], the State Government may appoint Additional Commissioner of Sales Tax (if any), and such number of -

(a) Deputy Commissioners,

(b) Assistant Commissioners,

(c) Sales Tax Officers, and

(d) other officers and persons, and give them such designation (if any), as that Government thinks necessary.

(3) The Commissioner shall have jurisdiction over the whole of the 2[State of Maharashtra]; and an Additional Commissioner of Sales Tax, if any, be appointed, shall have jurisdiction over the whole of the State, or where the State Government so directs, over any local area thereof. All other officers shall have jurisdiction over such local areas as the State Government may specify.

(4) The Commissioner shall have and exercise all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act, and on Additional Commissioner, if any, be appointed, shall as otherwise directed by the State Government have and exercise within its jurisdiction all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act..

(5) A Deputy Commissioner shall 3[save as otherwise directed by the State Government,] have and exercise in the area within its jurisdiction all the powers and shall perform all the duties, conferred or imposed on the Commissioner by or under this Act 4[\* \*].

(6) 5[Senior Assistant Commissioners, Assistant Commissioners] Sales Tax Officers and other

(7) The State Government may, subject to such restrictions and conditions (if any) as it may impose, by notification in the Official Gazette, delegate to the Commissioner the powers (not being powers relating to the appointment of Additional Commissioner or Deputy Commissioners) conferred on that Government by sub-sections (2) and (3).

6[(7A) No person shall be entitled to call in question the territorial jurisdiction of any officer or person appointed under sub-section (2) after the expiry of sixty days from the date of receipt by such person of any notice under this Act or under any earlier law, issued by such officer or person. If, within the period aforesaid, 7 [a separate application in writing exclusively raising an objection as to the jurisdiction of any such officer or person is made to him, the officer or person shall refer the question to the: Commissioner, who shall after giving the person raising the objection a reasonable opportunity of being heard, make an order determining the question. The order made by the Commissioner shall be final.]

(8) All officers and persons appointed under sub-section (2) shall be subordinate to the Commissioner, and the subordination of

officers (other than the Commissioners) and of persons, amongst themselves shall be such as is prescribed.

1. Substituted for the words "To assist the Commissioner in execution of his functions under this Act" by Mah.21 of 1970, s. 2(a).

2. Substituted for the word "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

3. Inserted by Mah. 21 of 1970..S. 2(b)(i).

4. The portion beginning with the words "the Commissioner may," and ending with the words "restored to him or them" was deleted by Mah. 21 of 1970, s. 2(b)(ii).

5 . Substituted and deemed to have been substituted w.e.f. 17.8.1992 for the words "Assistant Commissioners" by Mah. 51 of 2000.

6. Sub-section (7A) was inserted by Mah. 21 of 1962, s. 11.

7 . Substituted for the portion beginning with the words "an objection" and ending with the words "a memorandum" by Mah. 24 of 1990, s. 7.

## **21. tribunal :-**

12(1) There shall be a Tribunal to be called "the Maharashtra Sales Tax Tribunal". Subject to the provisions of this section, the Tribunal shall consist of such number of members appointed by the State Government as that Government may from time to time consider necessary for the proper discharge of the functions conferred on the Tribunal by or under this Act.)

(2) The State Government shall appoint one of the members of the Tribunal to be the President thereof.

3[(3) The qualifications of the members constituting the Tribunal shall be such as may be prescribed and a member shall hold office for such period as the State Government may fix in his case.]

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

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

(6) 4[If the members of a Bench] are divided, the decision shall be the decision of the majority; but if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the other

members of the Tribunal; and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it. 5[...]

6[(6A) Subject to such conditions and limitations as may be prescribed the Tribunal shall have power to award costs, and the amount of such costs shall be recoverable from the person ordered to pay the sale as arrear of land revenue.]

(7) Subject to the previous sanction of the State Government, the Tribunal shall for the purpose of regulating its procedure (including the place or places at which the Tribunal, 7 [the Benches or the members] thereof shall sit) and disposal of its business, make regulations]11 consistent with the provisions of this Act and rules.

(8) The regulations made under sub-section (7) shall be published in the Official Gazette.

1. Substituted by Mah. 40 of 1969, s. 3(a).

2. Sub-section (2) of section 3 of Mah. 40 of 1969.

3. Sub-section (3) was substituted for the original by Bom. 69 of 1959. s.3(l).

4. Substituted for the words "If the members of the Tribunal or a Bench thereof by Mah. 40 of 1969, s. 3(b).

5. Sub-section (6AA) was deleted by Mah. 40 of 1969, s. 3(c).

6. Sub-section (6A) was inserted by Mah. 16 of 1963, s.5.

7. Substituted for the words "or the Benches" by Mah. 44 of 1964. s. 2(cl).

### **21A.** Settlement Commission :-

(1) The State Government may, by notification in the

(2) The Commission shall consist of such number of members appointed by the State Government, as it may from time to time consider necessary for the proper discharge of the functions conferred on the Commission under this Act.

(3) The State Government shall appoint one of the members of the Commission to be the Chairman thereof.

(4) The qualifications of the members of the Commission shall be such as may be prescribed and a member shall hold office for such period as the State Government may fix in his case.

(5) The functions of the Commission may be discharged by the members sitting in Benches of two or more.

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



(7) The regulations made under sub-section (6) shall be published in the Official Gazette.]

1. Inserted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

## **CHAPTER 4** Registrations, Licences, Authorisations, Recognitions and Permits

### **22. Registration :-**

:-

(1) No dealer shall, while being liable to pay tax under section 3 or under sub-section (6) of section 19, carry on business as a dealer, unless he processes a valid certificate of registration as provided by this Act: Provided that, the provisions of this sub-section shall not be deemed to have been contravened, of the 1[dealer] having applied for such registration as in this section provided, within the prescribed time, or as the case may be, within the period specified in sub-section (6) of section 19, carries on such business.

(2) Every dealer required by sub-section (1) to possess a certificate of registration, shall apply in the prescribed manner, to the prescribed authority.

(2A) A person or a dealer who intended to carry on the business of buying or selling of goods, but is not liable to pay tax under section 3 may, if he so desires, apply for the certificate of registration in the prescribed manner, to the prescribed authority: Provided that, the certificate of registration shall not be granted unless the person or the dealer has deposited an amount of Rs. 5,000 in Government Treasury advance towards the tax, interest or penalty, if any, that may become due. The amount may be adjusted against the tax payable according to the return required to be filed in the year in which registration is granted or in the succeeding year. The amount of the deposit in excess of the amount due from him, by way of tax, interest or penalty, shall be refunded as provided in section 43.]

(3) If the prescribed authority is satisfied 2[after such inquiry as it deems fit] that an application for registration is in order, it shall register the applicant and issue to him a certificate of registration in the prescribed form.

(4) The prescribed authority may after considering any information furnished under the provisions of this Act or otherwise received, amend from time to time, any certificate of registration. 3[,\* \*]

[(5) Notwithstanding anything contained in this Act, every dealer who is registered under sub-section (2A) shall, so long as his registration is in force be liable to pay tax under this Act.]

4[(5A) If a person or a dealer upon an application made by him has been registered under this section and thereafter it is found that he ought not to have been so registered under the provisions of this section, he shall be liable to pay tax during the period from the date on which his registration certificate took effect until it is cancelled, notwithstanding that he may not be liable to pay tax under this Act.]

(6) Where-

(a) any business, in respect of which a certificate of registration has been issued under this section, has been discontinued. 5[or has been transferred or otherwise disposed of,] or place of 6then in the case covered by clause (a), the dealer shall apply in the prescribed manner and within the prescribed time to the Commissioner and in the case covered by clause (b), the dealer may apply in the prescribed manner to the Commissioner, and thereupon the Commissioner may, after such enquiry as he deems fit and subject to rules, cancel the registration with effect from such date including any anterior date as he considers fit having regard to the circumstances of the case]: Provided that, where the Commissioner is satisfied that any business in respect of which a certificate has been issued under this section has been discontinued, 7[or transferred or disposed of,] and the dealer has failed to apply as aforesaid for cancellation of registration, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, cancel the registration with effect from such date as he may fix to be the date from which the business has been discontinued, or transferred or disposed of, [or place of business is changed to a different local area, as may be prescribed as the case may be] 8[Provided that, the cancellation of certificate of registration in an application of the dealer or otherwise] shall not affect the liability of the dealer to pay the tax 9[including any penalty and interest] due for any period prior to the date of cancellation whether such tax [including any penalty and interest] is assessed before the date of cancellation but remains unpaid, or is assessed thereafter.

10 [(7) If any certificate of registration has been cancelled under sub-section (6) with effect from a date anterior to the date of the order of cancellation then the dealer shall, for all the purposes of this Act, be deemed to be an unregistered dealer from such anterior date and the purchases, if any, made or purported to have

been made from such dealer on or after such anterior date shall, for all purposes including levy of tax, be deemed to be purchases made from an unregistered dealer: Provided that, where any dealer purporting to have purchased any goods from such dealer on a date falling during the period commencing on the date of the cancellation of his certificate of registration and ending on the date of passing the order of such cancellation, proves to the satisfaction of the Commissioner that the tax due has been paid in respect of sales to him of such goods, then it shall be deemed that such goods are purchased from a Registered dealer.]

1. Substituted for the word "person" by Bom. 69 of 1959, s.4.
2. Inserted by Mah. 29 of 1965. s.14(a).
3. Sub-section (5) was deleted by Mah. 29 of 1965, S.14(b).
4. Sub-section (5A) was deemed to have been substituted w.c.f. 1.7.1981 by Mah. 22 of 1988.
5. Inserted by Mah. 40 of 1969. s. 4(a).
6. Substituted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.
7. Inserted by Mah. 40 of 1969. s. 4(b)(i).
8. Substituted for the words "Provided that the cancellation of a certificate of registration" by Mah. 21 of 1962, s.12(2).
9. Substituted for the brackets and words "(including any penalty)" by Mah. 11 of 1987.
10. Sub-section (7) added by Mah. 11 of 1992 as amended by Mah. XVIII 1994 from the date to be notified by the State Government in the Official Gazette. However, this remained in force from 1.5.1992 to 8.9.1992.

## **22A. Fresh registration of dealers :-**

:- 1[

(1) Every Registered dealer who holds, on such date as the State Government may, by notification in the Official Gazette, specify a valid certificate of registration (hereinafter referred to in this section as "the existing certificate of registration") issued to him shall obtain, in lieu of the existing certificate of registration, a fresh certificate of registration as provided in this section.

(2) Every dealer required by sub-section (1) to obtain a fresh certificate of registration shall apply in such form, manner, time and to such authority as may be prescribed and such application shall be accompanied by the existing certificate of registration together with all additional copies thereof if any, issued to him.

(3) On receipt of such application, the prescribed authority shall, subject to rules, issue to the applicant a fresh certificate of registration in the prescribed form and thereupon the fresh certificate of registration so issued shall, for all the purposes of this Act, be deemed to be a certificate of registration issued under section 22.

(4) A dealer who has produced his existing certificate of registration with the application under this section shall not be deemed to have ceased to be in possession of the existing certificate of registration until a fresh certificate of registration is issued to him under sub-section (3) or, as the case may be, until such application is finally rejected.

(5) Without prejudice to the provisions of sub-sections (6) and (7) section 22, all existing certificates of registration shall stand cancelled with effect from such date as the State Government may, notify in the Official Gazette.

(6) Nothing in sub-section (5) shall affect the liability, if any, of any dealer for any payment of tax, penalty, interest or sum fortified in respect of any period whether commended before or after such date.

(7) The provisions of this section shall, mutatis mutandis apply in respect of all authorizations, 2 [\* \*] and Permits issued under this Act, as they apply in respect of the registration.]

1. Added by Mah. 11 of 1992 as amended by Mah. XVIII 1994 w.c.f. 1.4.1994. However, this provision as originally inserted by Mah. 11 of 1992 was in force from 1.5.1992 to 8.9.1992.

2. The word "Recognitions" was deleted by Mali. Tax Laws (Levy and Amendment) Act. 1995.

## **22B. Deleted :-**

∴- 1 [\* \*]

1. This section was inserted by Mah. 11 of 1992 remained in force from 1.5.1992 to 8.9.1992.

## **23. Licences deemed to be cancelled :-**

∴- 1 All licences issued under this Act shall be deemed to be cancelled from the notified day.]

1. Substituted for the original by Mali. 32 of 1981, s.20.

## **24. Authorisations :-**

:- Where, during the previous or current year, the turnover of sales of a Registered dealer of goods-

(a) which are exported by him from the State outside the territory of India, or dispatched by him from the State to any place in India outside the State; and

(b) which are sold by him to any Authorised dealer and exported or dispatched by that dealer to any destination referred to in clause (a); exceeds 1[one lakh rupees], he may apply for an Authorization to the Commissioner. Subject to the provisions of section 27 the Commissioner shall, if the Registered dealer satisfies such further requirements (including the furnishing of adequate security) as may be prescribed, issue to him an Authorization in such form, and subject to such conditions, as may be prescribed, Explanation - Where a registered dealer has during the year pending on the 31st day of March 1959 or the year] commencing on the 1st day of April 1959 been a dealer registered under an earlier law, and the turnover of sales made by him during that year -

(i) of goods which were exported or dispatched by him to a destination referred to in clause (a);

(ii) of goods which were sold by him to dealers registered under an earlier law who exported or dispatched them to any such destination, had exceeded 2 [one lakh rupees], he may also apply under this section for an Authorization to the Commissioner; and the Commissioner shall issue to him an Authorization in the manner aforesaid.

1. Substituted for the words "sixty thousand rupees" by Man. 9 of 1988, s.20.

2. Substituted for the words "sixty thousand rupees" by Man. 9 of 1988, s.21 w.c.f 22.4.1988.

## **25. Recognition deemed to be cancelled :-**

:- All Recognitions issued under this Act, shall be deemed to be cancelled from the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 1995.]

## **26. Permits :-**

:- A Registered dealer, who bona fide buys or sells for an agreed Commission any goods on behalf of a principal mentioned in his account in respect of each transaction and whose turnover of such purchases during the previous year or current year exceeds [one lakh rupees], may apply for a Permit to the Commissioner. Subject

to the provisions of section 27 the Commissioner shall, if the Registered dealer satisfies such further requirements (including the furnishing of adequate security) as may be prescribed, issue to him a Permit in such form, and subject to such conditions, as may be prescribed.

## **27. Commissioner may refuse Authorisation, etc :-**

:- 1[ The Commissioner may refuse to grant an Authorization, 2[\* \*] or, as the case may be, Permit, to a dealer under any of the following circumstances, that is to say,-

(a) if an Authorization, 2[\* \*] or, as the case may be, Permit previously granted under this Act to such dealer, has been cancelled in the circumstances other than those referred to subsection (1) of section 28;

.,

(b) during any period of suspension of the dealers Authorization, 2[\* \*] or, as the case may be. Permit; (e) if the dealer- (i) has failed to pay any tax 3[(including any penalty and interest)] due from him by or under any provisions of this Act, or (ii) has failed, without sufficient cause, to furnish any returns required to be furnished by or under any provisions of this Act (other than the provisions of section 51); or (iii) is an undischarged insolvent; or (iv) has been convicted of an offence under this Act; (d) if the dealer is a firm, and any partner thereof is a person- is) whose Authorization, [\* \*} or, Permit as the case may be, has been cancelled in the circumstances referred to in clause (a), or (ii) to whom an Authorization, 1 [\* \*] or. Permit as the case may be, was previously refused in the circumstances referred to in clause (c).]

1 Substituted by Mali. 32 of 1981, s.24.

2 The word "Recognition" was deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

2 The word "Recognition" was deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

2 The word "Recognition" was deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

1 Substituted by Mali. 32 of 1981, s.24.

## **28. Cancellation or suspension of Authorisation, etc :-**

:-

(1) If-

(a) the registration of an Authorised dealer, 1[\* \*] or Commission

agent holding a Permit is cancelled; or

(b) in any year, -

(1) the turnover of sales of an Authorised dealer or, as the case may be, the turnover of purchases of a Commission agent holding a permit fails to exceed the amount requisite for the grant of Authorization or Permit, 2[\* \*]

3[(ii) \* \* \*]

(c) the authorised dealer, 4[\* \*] or Commission agent holding a permit does not wish to continue to have an Authorization, 4[\*\*] or Permit, then, in the circumstances slated-

(i) in clause (a), the dealer shall forthwith,

(ii) in clause (b), the dealer shall within fifteen days from the end of such year.

(iii) in clause (c), the dealer may at any time, surrender his Authorization, Recognition or Permit to the Commissioner for cancellation, and the Commissioner shall cancel the Authorization, 6[\* \*] or, as the case may be, the Permit, and accordingly in the circumstances stated in clause (d), the Authorization, 5[\* \*] or Permit, shall stand cancelled from the date of the cancellation of the registration, and in any other case it shall cease to have effect from the date of surrender for cancellation.

(2) If an Authorised dealer, 10[\*\*] or Commission agent holding a permit-

(a) fails to pay any tax [(including any penalty and interest)] due from him by or under any provisions of this Act, or any earlier law. or

(b) contravenes or has contravened any provisions of this Act or any condition of his Authorization 4[\* \*] or, Permit, or

(c) becomes an insolvent, or

(d) has been convicted of an offence under this Act: or any earlier law, then the Commissioner may, after giving the Authorised dealer. 9[\*] or, as the case may be. Commission agent a reasonable opportunity of being heard, suspend the Authorization, 10 [\*\*] or, as the case may be, the Permit for such period as he thinks fit, or cancel it. Thereupon in either case such dealer shall within 7 days of receipt by him of the order of suspension or cancellation surrender the Authorization. [\* \*] or the Permit as the case may be, to the Commissioner.]

1. The word "Registered dealer" was deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

2. The word "or" deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

3 . Sub-clause (ii) deleted by Mah. Tax Laws (Ix-vy and Amendment) Act, 1995.

4. Substituted by Mali. 32 of 1981, s.24.

6. The word "Recognition" deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

9. The word "Recognition" was deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

10. The word "Licence" was deleted by Mah. 32 of 1981. s.2G(a).

### **29. Non-transferability of registration, Authorisation, etc :-**

: - Save as otherwise provided in section 31, a certificate of registration 1[\* \*] 2 [\* \*] or Permit shall be personal to the dealer to whom it is granted and shall not be transferable.

1. The word "Licence" was deleted by Mah. 32 of 1981. s.2G(a).

2. The word "Recognition" was deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

### **30. Information to be furnished regarding changes in business, etc :-**

:- If any dealer liable to pay tax under this Act- (a) sells or otherwise disposes of his business or any part thereof or effects of knows of any other change in the ownership of the business, or (b) discontinues his business or changes the place thereof or opens a new place of business, or (|c) changes the name or nature of his business, or (d) being a manufacturer, effects any change in the classes of goods sold or bought by him, or (e) enters into partnership or other association in regard to his 3[business] 1[\*] 5[\*] 6 [(I) effects any change regarding the opening or closing of the Bank Accounts of his business.] he, shall within the prescribed time, inform the prescribed authority accordingly: and where any such dealer dies, his executor, administrator or other legal representative, or where any such dealer is a firm and there is a change in the constitution of the firm or the firm is dissolved every person who was a partner thereof, shall in like manner, inform the said authority of such death, change in the constitution of. or as the case may be. dissolution.

3 Substituted for the words "business or" by Mah. Tax Uis (Levy and Amendment) Act. 1995.

1 The word "Licence" was deleted by Mah. 32 of 1981. s.2G(a).

5 Clause (i) was inserted by Mah. 11 of 1992 remained in force from 1.5.1992 to 8.9.1992 and deleted by Mah. 18 of 1994 w.c.f.



1.4.1994.

6 Added by Mah. Ael 17of1999 w.e.f. G.2.1999.

**31. Certificate of registration, Authorisation, etc to continue in certain circumstances :-**

:- Where a Registered dealer-

- (a) effects change in the name of his business, or
  - (b) is a firm, and there is a change in the constitution of the firm without dissolution thereof, or
  - (c) is a trustee of a trust, and there is change in the trustees thereof, or
  - (d) is a guardian of a ward, and there is a change in the guardian,
- then, merely by reason of any of the circumstances aforesaid, it shall not be necessary for the dealer or the firm with the changed constitution, or the new trustees, or the new guardian to apply for a fresh certificate of registration and on information being furnished in the manner required by section 30, the certificate of registration shall, be amended, and any [\* \*] Authorization. [\* \*] or Permit granted to the Registered dealer prior to any such change as is mentioned aforesaid shall, subject to the provisions of section 28, also continue to be valid, as [also any declaration] given under section 11 or 12 under such [\* \*] Authorization. [\* \*] or Permit.

**CHAPTER 5 Returns, Assessment, Payment, Penalty, Recovery and Refund of Tax**

**32. Returns :-**

:-

- (1) Every Registered dealer shall [furnish returns in such form] for such period, by such dates, and to such authority, as may be prescribed: Provided that, the Commissioner may subject to such terms and conditions as may be prescribed, 1[exempt any such dealer from furnishing such returns or permit any such dealer]-
- (a) to furnish them for such different periods, or
  - (b) to furnish a consolidated return 2[ relating to all or any of the places of business] of the dealer in the State for the said period, or for such different period, to such authority, as he may direct.
- (2) If the Commissioner has reason to believe -
- (a) that the turnover of sales or the turnover of purchases of any dealer is likely to exceed the relevant limit specified in sub-section (4) of section 3 for liability to pay tax, or

(b) that either the turnover of sales or the turnover of purchases of any dealer has during any year exceeded -

(i) 3[Rs. 40,000] in the case of a dealer who is an importer or manufacturer, or

(ii) 4[Rs. 1,00,000] in the case of any other dealer, he may, by notice served in the prescribed manner, require such dealer to furnish return as of he were a Registered dealer; but no tax shall be payable by such dealer, unless his turnover exceeds the relevant limit specified in sub-section (4) of section 3, not otherwise than in accordance with the other provisions of this Act.

(3) If any dealer having furnished returns under sub-section (1) or (2), discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the last date prescribed for furnishing the original return.

5 [ \* ]

1. Substituted for the words "exempt any dealer required to furnish returns under this section" by Bom 69 of 1959 s. 9.

2. Substituted for the words "relating to all the places of business" by Mah. 21 of 1962, s. 14.

3. Substituted for the words and figures "Rs. 16,000" by Mah. 11 of 1987, s. 10(a).

4. Substituted for the words and figures "Rs. 50,000" by Mah. 11 of 1987, s. 10(b).

5. Sub-section (4) as added by Mah. 11 of 1992 remained in force from 1.5.1992 to 8.9.1992 and deleted by Mah. XV of 1994 w.e.f. 1.4.1994.

### **33. Assessment of tax :-**

1[(1) The amount of tax due from dealer liable to pay tax shall be assessed separately for each year during which he is so liable: Provided that, the Commissioner may, subject to such conditions as may be prescribed and for reasons to be recorded in writing assess the tax due from any dealer during a part of a year: Provided further that, when Registered dealer fails to furnish any return relating to any period of any year, by the prescribed date, the Commissioner may, if he thinks fit, assess the tax due from such dealer separately for different parts of such year.]

(2) If the Commissioner is satisfied that the returns furnished [by a Registered dealer] in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns. Provided that, where a notice under sub-

section (5) has been issued or served on the dealer on the ground that returns in respect of any period ending on or before the 31st March 1995 have not been filed by him and if the dealer proves to the satisfaction of the Commissioner that he has filed such returns on or before the 30th June 1995 and furnishes copies thereof, then, notwithstanding anything contained in the said notice, the Commissioner may, if he is satisfied that such returns are correct and complete, assess the amount of tax due from the dealer on the basis of such returns.)

(3) If the Commissioner is not satisfied that the returns furnished by a Registered dealer] in respect of any period are correct and complete, and he thinks it necessary to require the presence of the dealer or the production of further evidence, he shall serve on such dealer in the prescribed manner a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such dealer relies in support of his returns.

(4) 2[If a registered dealer] fails to comply with the terms of any notice issued under sub-section (3), the Commissioner shall, assess to the best of his judgement, the amount of tax due from him. 3[

(4A) Where all the returns are filed by a registered dealer for any year ending on or after the notified day, within 6 months from the end of the-year to which such returns relate) no order of assessment under sub-section (3) or (4) in respect of that year shall be made after the expiry of three years from the end of the said year, and if for any reason such order is not made within the period aforesaid, then the returns so filed shall be deemed to have been accepted as correct, and complete for assessing the tax due from such dealer.. 4[Explanation - In the case- of returns pertaining to the years ending prior to the notified day and filed, on or before the notified day ending on or before any other date thereafter as the State Government may, by notification in the Official Gazette, specify in, that behalf, the period of three years shall be computed from the notified day.) 4[Explanation - in the case of returns filed by a registered dealer referred to in sub-clause (b) of clause (37) of section 2 and who has not opted; for the financial year, the period of three years shall be computed from the end of the financial year in which the year, the reference to; which the accounts of that dealer are maintained in his books, ends:] Provided that, where a fresh assessment has to be made to give effect to any finding or direction contained in any order made under this Act or any earlier law or to any order of the Tribunal or

the High Court or the Supreme Court, such assessment shall be made within thirty-six months from the date of [communication to the Commissioner of] such finding, direction or order, as the case may be:

Provided further that, in computing any period of limitation laid down in this section, the time during which the assessment remained stayed under the order of the Tribunal or of the High Court or the Supreme Court shall stand excluded: Provided also that, the Commissioner may, in the interest of the revenue or at the instance of the dealer, issue directions not to proceed with the assessment of any particular dealer or class of dealers for any particular period, if such, assessment involves a decision on a point which is concluded against the State by a judgement of the Tribunal or the High Court and State Government, or the Commissioner has initiated any proceedings against such judgement before an appropriate forum. 7[Aa soon as may be after the final conclusion of such proceedings or, as the case may be, after recording, the reasons therefor in writing, the Commissioner may, at any time, revoke such directions.)

8[(4B) Notwithstanding anything contained in this section, the assessment shall be completed within a period of eighteen months from the date of such order of revocation as referred to in the third proviso to sub-section (4A) and the period of limitation laid down in this section shall be deemed to be modified accordingly.

(4C) Notwithstanding anything contained in this sections or any other provisions of this Act. where the assessment involves a decision on a point which is concluded against the State by a judgement of the Tribunal and the State Government or the Commissioner has initiated any proceedings against such judgement before an appropriate forum, then the Commissioner may complete the assessment as if the point was not so-decided against the State, but shall stay the recovery, of such of the dues including the interest and. penalty if any, in so far as they relate to such point, until the decision by the appropriate forum and after such decision modify the assessment order, if found necessary.]

9[(5) If a Registered dealer does not furnish returns in respect of any period by the prescribed date, the Commissioner shall, at any time within eight years from the end of the year in which such

(6) If the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration or failed to apply for registration within time as required by section 22, the Commissioner shall at any time within

eight years from the end of the year in which such period occurs, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, the amount of tax (if any) due from the dealer in respect of that period, and any period or periods subsequent thereto.]

(6A) Notwithstanding the forgoing provisions of this section, where the Commissioner is not satisfied about the correctness or completeness of the accounts of a dealer, or where no method of accounting has been regularly employed by a dealer, the Commissioner may after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, the amount of tax (if any) due from him.)

10[(6B) If, during the course of any proceedings under section 49, in case of any dealer or person, the Commissioner, on the basis of evidence available to him, is of the opinion that tax is sought to be evaded in respect of any period by not recording or recording in an incorrect manner, any transaction of sale or transaction of purchase, or that any deduction has been incorrectly claimed on any transaction, then, notwithstanding that any notice for assessment has been issued under other provisions of this section, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, proceed to assess, without prejudice to any assessment which may be made in respect of the said period under other provisions of this section, to the best of his judgement, the amount of tax if any due from him on such transaction:

Provided that, tax on such transaction and penalty and interest, if any, consequent upon such tax, will not be levied or demanded when the dealer or person is assessed to tax under the other provisions of this section, in respect of the same period.]

(7) Any assessment made under this section shall be without prejudice to any penalty, 11 [br liability to pay interest] or prosecution for an offence, under this Act.]

1. Sub-section (1) was substituted by Mah. 32 of 1972. s.2(a).

2. Substituted for the words "if a dealer" by Mah.32 of 1972. s.2(d)

3. This sub-section was inserted by Man. 32 of 1981,.s.29.

4. The existing Explanation renumbered as Explanation 1 and Explanation 11 inserted by Mah. 24 of 1985. s.3.

6. Inserted by Mah. 51 of 2000 w.e.f. 13.9.2000.

7. Substituted, for the words The period covered by such direction to stay the assessment proceeding shall be excluded in computing The period of limitation laid down in this section" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

8. Sub-section (413) as added by Mah. 11 of 1992 remained in force from 1.5.1992 to 8.9.1992 only.
9. Sub-sections (5). (6) and (7) substituted and deemed to have been-substituted by Mah. 32 of 1972.
10. Sub-section (613) was inserted by Mah. Act 17 of 1999 w.c.f. 6.2.1999.
11. Sub-section (6A) was inserted by Mah. 62 of 1974. s.7.

**33A.** Special Provisions For Transitional Accounting Year :-

(1) If in order to comply with the requirements of the Income Tax Act, 1961 , as amended by the Direct tax Laws (Amendment) Act, 1987, any dealer has changed the year by reference to which the accounts of that dealer are ordinarily maintained in his books of account, and if the dealer has adopted a transactional accounting year of duration longer than his earlier accounting year as an incident of such charge, then notwithstanding anything contained in this Act or the rules made and notifications issued thereunder, but subject to such conditions as may be prescribed, the provisions of this Act, rules made and notifications issued thereunder, shall in respect of the transactional accounting year, apply in the manner hereinafter provided in this section.

(2) The amount of tax due from a dealer liable to pay tax may be assessed or reassessed by a single order of assessment in respect of the transactional accounting year.

(3) Except for the purposes of section 3 and except where the context requires otherwise, the word "year" wherever it occurs, shall be deemed to include the transactional accounting year and the provisions of this Act, rules made and notifications issued thereunder, shall be construed accordingly.

(4) Except for the purposes of section 3, and except where the context requires otherwise, any reference in this Act, the rules made and notifications issued under this Act to any amount or amounts in relation to a year shall be construed for the purposes of the transactional accounting year as reference to the said amount or amounts as increased by multiplying each such amount by a fraction of which the numerator is the number of months in the transactional accounting year and the denominator is twelve:

Provided that, where the transactional accounting year includes a part of a month, then, if such part is of fifteen days or more, it shall be increased to one complete month and if such part is of less than fifteen days, it shall be ignored.

(5) If any difficulty arises in giving effect to the provisions of this

section, during the period of three years from the date of commencement of the Bombay Sales Tax (Amendment and Validating Provisions) Act, 1988, the State Government may, by notification in the Official Gazette, do anything not inconsistent with such provisions which appears necessary or expedient for the purpose of removing the difficulty.

**33B.** Special Provisions For Assessment For Period Shorter Than A Year :-

Where a dealer is being assessed or re-assessed for a part of a year, for any reason whatsoever, then for the purposes of levy of tax or exemption from the payment of whole or part of tax and for any purpose incidental or ancillary thereto, any reference to any specified amount or amounts in section 9, 15A-1 or in any notification issued under section 41 in relation to a year shall, for the purposes of such assessment or re-assessment, be construed as a reference to the said amount or amounts as rendered by multiplying each such amount or amounts by a fraction of which the numerator is the number of months in the part of the year for which such dealer is being assessed or reassessed and the denominator is twelve: Provided that, where such part of the year includes a part of a month, then, if such part is of fifteen days or more, it shall be increased to one complete month and if such part is of less than fifteen days, it shall be ignored.

Provided further that, where such part of the year is less than fifteen days, it shall be increased to one complete month.

**33C.** Amalgamation Of Companies :-

(1) When two or more companies are to be amalgamated by the Order of a court or of the Central Government and the Order is to take effect from the date anterior to the date of the said Order appointed day any two or more of such companies have sold or purchased any goods to or from each other during the period commencing on the date from which the Order is to take effect and ending on the date of the Order, then notwithstanding anything contained in the said Amalgamation Order, such transaction of sale and purchase shall be included in the turnover of sales or, as the case may be, purchases of the respective companies and shall be assessed to tax accordingly, and for the purposes of this Act, the said two or more companies shall be treated as distinct companies

and shall be treated as such for the entire period up to the date of the said Order, and the registration certificates of the said companies shall be cancelled, or amended, where necessary, with effect from the date of the said Amalgamation Order.

(2) Words and expressions used in this section, but not defined, shall have the respective meanings assigned to them in the Companies Act, 1956.

#### **34. Applicability of all the provisions of this Act or earlier law to person liable to pay tax under section 19 :-**

Where in respect of any tax 1 [(including any penalty and interest)] due from a dealer under this Act or under earlier law, any other person is liable for the payment thereof under section 19 , all the relevant provisions of this Act, or as the case may be, of the earlier law shall in respect of such liability apply to such person also as if he were the dealer himself.

1. Substituted for the brackets and words "(including any penalty)" by Mah. ill of 1987 s.12.

#### **35. Re- assessment of turnover escaping assessment, under-assessed, etc :-**

(1)1[If, after a dealer has been assessed under section 33 or under section 4 or under section 41, for any year or part thereof, the Commissioner has reason to believe that any turnover of sales or turnover of purchases of any goods has in respect of that year or part thereof escaped assessment, or has been under-assessed or assessed at a lower rate, or that any deduction has been wrongly made or any drawback, set-off or refund has been wrongly granted then the Commissioner may,-] 2[\*\*] (b) where he has reason to believe that the dealer has concealed such sales or purchases or any material particular relating thereto, or has knowingly furnished incorrect returns at any time within either years, and (c) in any case, at any time within five years, 3[of the end of that year, after giving the dealer a reasonable opportunity of being heard, may proceed to assess or re-assess, to the best-of his judgement, the amount of tax due from such dealer:] Provided that, the amount of tax shall be assessed at the rates at which it would have been assessed had there been no under assessement or escapement, but after making deductions (if any) permitted financial year by or



under this Act. 4[\* \*]:

Provided further that, where in respect of such turnover an order has already been passed in appeal or revision under this Act 5[\* \*], the Commissioner shall make a report to the appropriate appellate or revising authority under this Act, which shall thereupon after giving the dealer concerned a reasonable opportunity of being heard, pass such order as it deems fit.

6[(1A) If, after such assessment of a dealer is made under section 33, except under sub-section (2) thereof, in respect of any period, it is found that the total amount of tax paid with returns is less

(2) Nothing in sub-section 7[(1) or (1A)] shall apply to any proceeding (including any notice issued) under section 8 [\* \*] 57 or 62.

(3) Nothing in section 57 or 62 shall affect a proceeding under this section.

1. This portion was deemed always to have been substituted by Mah. 32 of 1972, s.3(a)(i).

2. Clause (a) was deemed always to have been deleted by Mah. 21 of 1962, 3,21(1).

3. Substituted and deemed always to have been substituted by Mah. 32 of 1972, s.3(a)(ii).

4. The words "or as the case may be, any earlier law" were deemed always to- have been deleted by Mah. 21 of 1962. 8.21(1).

5. The words "or the relevant law" were deemed always to have been deleted by Mah. 21 of 1962, s.21(I).

6. Sub-section (1A) inserted by Mah. Act 17 of 1999 w.e.f. 6.2.1999.

7. Substituted for the figure and brackets "(1)" by Mali. Act 17 of 1999 w.c.f. 6.2.1999.

8. The figures and word "33 or" were deemed always to have been deleted by Mah. 32 of 1972, s.3(b).

### **35A.** Powers Of Commissioner Of Assessment Or Re-Assessment Of Taxes Due Prior To 1St May 1960 :-

1 Where the amount of tax due from a dealer for any period prior to the 1st day of May 1960 has not been assessed or any turnover has escaped assessment or has been under assessed or assessed at a lower rate, or where any deduction has been wrongly made, then notwithstanding the reorganisation of the State of Bombay by the Bombay Reorganisation Act, 1960 , it shall be competent to the Commissioner to assess or reassess the amount of tax due in accordance with the relevant provisions of this Act or any earlier

law in respect of the sales or purchases made by such dealer during such period within the territories in the State of Maharashtra: Provided that, subject to Section 92 of the Bombay Reorganisation Act, 1960 in the case of consolidated returns furnished by a dealer for all the places of business in the State of Bombay before the 1st day of May 1960 the Commissioner shall complete the proceedings and assess the tax due from such dealer notwithstanding that the sales or purchases included therein were made in any territory now forming part of the State of Gujarat.]

1. Section 315A was inserted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects), Order, 1960.

### **36. Imposition of penalty in certain cases and bar to prosecution :-**

(1) Where any person, dealer or Commission agent purchases any taxable goods under declaration given by him under section 8A, 11, 12 or under any notification issued under section 41 and fails to comply with the conditions, recitals or undertakings of such declaration, then the Commissioner may, after giving the dealer concerned a reasonable opportunity of being heard in writing impose on him in addition to any tax payable a sum by way of penalty not exceeding twice the amount of tax: Provided that, no penalty under this sub-section shall be levied, if the person, dealer or Commission agent has included the purchase price of such goods in the turnover of purchases as, required by sub-section (1) or (2) of section 14 or by sub-section (2) of section 41 and has paid the tax thereon.] 4

5[(2) If while assessing or reassessing the amount of tax due from a dealer under any provisions, of this Act or while passing any order in any appeal, revision or rectification proceedings it appears to the Commissioner or the Tribunal that such dealer has,-

(a) failed to apply for registration as required by section 22 or has carried on business as a dealer without being registered in contravention of section 22; or

(b) failed without reasonable cause to comply with any notice in respect of the proceedings under section 33, 35, 49 or 57; or

6[(c) concealed the particulars of any transactions or knowingly furnished, inaccurate- particulars of any transaction liable to tax.]

then the Commissioner, or as the case may be, the Tribunal, may,

after giving the dealer concerned a reasonable opportunity of being heard, by order in writing impose upon the dealer by way of penalty, in addition to any tax assessed or reassessed or found due in the appeal or revision: or rectification proceedings, as the case may be,-

(i) in the case covered by clause (a), a sum not exceeding the amount of the tax payable by the dealer for a period during which he carried on business as a dealer without being registered in contravention of section 22:

(ii) in the case covered by clause (b), a sum not exceeding rupees ten thousand; and

(iii) in the case covered by clause (c), a sum not exceeding the amount of the tax found payable under the said clause.

Explanation I - Where a dealer has been assessed under section 33 or under section 41, or reassessed under section 35, or in whose case an order has been passed under section 55, 57 or 62, and the total amount of tax paid by the dealer with returns for any period found to be less than eighty per cent of the tax so assessed or reassessed or found due in appeal or revision or rectification then, for the purpose of clause (c) he shall be deemed to have concealed the particulars of any transactions or knowingly furnished, inaccurate particulars of any transaction liable to tax unless he proves to the satisfaction of the Commissioner or, as the case may be, the Tribunal that the payment of a lesser amount of tax was due to neglect on his part.

Explanation - Where a dealer fails to furnish returns in respect of any period, then for the purpose of clause (c) he shall be deemed to have concealed the particulars of any transactions or knowingly furnished, inaccurate particulars of any transaction liable to tax as assessed or reassessed or determined in an order passed under section 55, Section 57 or Section 62, unless he proves to the satisfaction of the Commissioner that such failure was for sufficient cause. 1[(2A) Where any 2[dealer or person knowingly] issues or produces a false bill, cash memorandum, voucher, declaration, certificate or other document by reason of which transaction of sale or purchase effected by him or by any other dealer is not liable to be taxed or is liable to be taxed at a reduced rate, then the Commissioner may, after giving 3[such dealer or, as the case may be, such person] a reasonable opportunity of being heard, by order in writing impose on him, in addition to any tax payable,-

(a) in the case of the first occasion of such issue or production, a sum by way of penalty not exceeding the amount of tax due in

respect of the transaction; and

(b) in the case of the second or subsequent such occasion a sum by way of penalty not exceeding twice the amount of tax due in respect of the transaction.

(2B) Where under the provisions of this Act or the rules made thereunder, a person furnishes a declaration or certificate by reason of which any tax is not leviable on any sale or purchase, and where such person fails to abide by, or act in contravention of, the recitals or term of such declaration or certificate, the Commissioner may, after giving such person a reasonable opportunity of being heard, direct him to pay by way of penalty not exceeding double the amount of tax which in the opinion of the Commissioner, would have been leviable on such sale or purchase had such declaration or certificate not been furnished.]

4(3)(a) If a dealer or a person does not pay the tax within the time he is required by or under the provisions of this Act to pay it, then he shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum equal to two per cent of the amount of such tax for each month or for part thereof after the last date by which he should have paid such tax: 5[Provided that, in the case of tax referred to in sub-clauses (ii) and (iii) of clause (a) of sub-section (4) of section 38, no interest shall be payable under this clause for a period commencing on the date immediately following the date of order of assessment, or as the case may be, reassessment and ending on the date specified in the notice served under the sub-section (4).] Explanation - For the purposes of this clause, in relation to the tax payable according to a return 6[or revised return] or as the case may be, to the payment of tax for the period covered by a return 6[or revised return] a dealer or a person shall, notwithstanding anything contained in section 38 or any other provisions of this Act or the rules made thereunder, be deemed not to have paid the amount of such tax within the time he is required by or under the provisions of this Act to pay it, if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of 7[such return or revised return as provided by or under the provisions of this Act] and accordingly, if he has not paid the full amount of such tax or has paid only the part of the amount of such tax by such date, he shall be liable under this clause for payment of interest after such date on the full or part, as the case may be, of the amount of such tax which has remained unpaid on such date.] 8[(b) If any tax, other than the tax on which interest is leviable under clause (a), has remained

1[for one month after the end] of any period of assessment, then the dealer or the person shall be liable to pay by way of simple interest, a sum equal to 2 per cent of such tax for each month or for part thereof from the date immediately following the date on which the dealer or person has been assessed expires till the date of order of assessment and where any payment of such unpaid tax whether in full or in part is made on or before the date of order of assessment, the amount of such interest shall be calculated by taking into consideration the amount of and the date of such payment. If as a result of any order passed under this Act, the amount of tax which had so remained unpaid is enhanced or reduced, as the case may be, the interest shall be enhanced or reduced accordingly]:

Provided that, the Commissioner 2[or any appellate or revisional authority may subject to the rules and] for reasons to be recorded in writing, remit the whole or any part of the interest payable in respect of any period:

Provided further that, no interest under this section shall be payable by a dealer to whom an Eligibility Certificate has been granted and for whom due date of payment has been extended, moratorium has been granted or installments have been granted under the second proviso to subsection (4) of section 38, and the payments have been made in accordance with the provisions of this Act.]

3[Provided also that, in respect of any period of assessment starting on or after the 1st April 4[2000], any tax referred to in clause (b) 5[has remained unpaid and the dealer has filed all the returns in respect of the said period of assessment 6[within one month from the end] of the said period of assessment, then]

(a) no interest under that clause shall be payable by the dealer or the person if the tax so remained unpaid is less than ten per cent of the amount of tax assessed, reassessed, or found due in appeal, revision or rectification; and

(b) no dealer or person shall be liable to pay interest under that clause for a period in excess of eighteen months] 7[only if he has not concealed the particulars of any transactions or knowingly furnished, inaccurate particulars of any transaction liable to tax] 8[\*]

(4) If any dealer contravenes the provisions of section 47, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty a sum not exceeding double the amount of such bill or cash

memorandum in respect of which such contravention has occurred, or one hundred rupees whichever is more.

9 [(4A) If a dealer fails without sufficient cause, to file within the prescribed time a return for any period the Commissioner may, after giving an opportunity effacing heard, impose upon him by way of penalty a sum not exceeding two thousand rupees, such penalty shall be without prejudice to any penalty leviable under clause (c) of sub-section (2) of this section:

Provided that, this sub-section shall not apply to such class or classes of dealers as the Commissioner may, from time to time, specify in the Official Gazette.]

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

4 Sub-section (1) was substituted by Mah. 32 of 1981. s.30(a).

5 Substituted by Mah. 11 of 1987 s.11(a).

6 Substituted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

1 Sub-sections (2A) and (2B) were inserted by Mah. 42 of 1971, s.4.

2 Substituted for the words "dealer knowingly" by Mah. Act IX of 1996.

3 Substituted for the words "such dealer" by Mah. Act IX of 1996.

4 This sub-section was deemed to have been substituted w.e.f. 21.4.1987 by Mah. 22 of 1988.

5 Proviso and Explanation added by Mali. 20 of 1990, s.2. w.c.f. 21 st April 1987.

6 inserted and deemed to have been inserted w.e.f. 21.4.1987 vide Mah. 11 of 1992.

6 inserted and deemed to have been inserted w.e.f. 21.4.1987 vide Mah. 11 of 1992.

8 Substituted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

1 Substituted for the words "on the date prescribed for filling the last return in respect" by Mah. Tax Laws (Levy and Amendment) Act, 2000.

2 Substituted for the words "or any appellate revisional authority may" by Mah. 11 of 1992 as amended by Mah.xvii Act. 1994w.e.f. 1.4.1994.

3 Proviso added by Mah. Tax Laws (Levy and Amendment) Act. 1995.

4 Substituted for the figures " 1995" by Mah. Tax Laws (Levy and Amendment) Act, 2000.

5 Substituted for the words "has remained unpaid" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.

6 Substituted for the words "on or before the date prescribed for filing the last return in respect" by Mah. Tax Laws (Levy and Amendment) Act, 2000.

7 Inserted by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.

8 Clauses (c) and (d) deleted by Mah. 51 of 2000 w.e.f. 16.9.2000.

9 Sub-section (4A) was inserted by Mah. 32 of 1981. s.30(e).

**36A.** Date From Which Penally Deemed To Be Payable Under Section 36(3) During Certain Period :-

It is hereby declared that, for the purposes of sub-section (3) of section 36 as in force during the period commencing on the 1st January 1960 to 20th April 1987 (both days inclusive), in relation to the tax payable according to return or, as the case may be, to the payment of tax for the period covered by a return, a dealer shall, notwithstanding anything contained in section 38 as in force during the period aforesaid or any other provisions of this Act or the rules made thereunder, be deemed not to have paid the amount of tax within the time he is required by or under the provisions of this Act to pay it, if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of such return as required under the rules made under this Act; and accordingly, if he has not paid the full amount of such tax or has paid only a part of the amount of such tax by such date, he shall be deemed to have been liable under the said sub-section (3) of section 36 for penalty after such date on the full or part; as the case may be. of the amount of such tax which has remained unpaid on such date.

Explanation - For the purposes of the said sub-section (3) of section 36, the ground that a dealer is required to pay the tax payable according to a return, or as the case may be, for the period covered by a return, only when he receives a notice under sub-section (4) of section 38, or if such a notice received till the expiry of the date specified therein, shall not be deemed to continue a reasonable cause.

**37.** Imposition of penalty for contravention certain provisions :-

:-

1[(1) If any person- (a) (i) not being a dealer liable to pay tax under this Act, collects any sum by way of tax, or (ii) being a registered dealer, collects any amount by way of tax in excess of the tax, payable by him, or

2[(ii-a)\* ]

2[(ii-al)\* "1

(iii) otherwise collects tax in contravention of the provisions of section 46, or (b) being a dealer liable to pay tax under this Act, or being a dealer who was required to do so by the Commissioner by notice served on him fails in contravention of sub-section (1) of section 48 to keep a true account of the value of the goods purchased or sold by him, or fails when directed so to do under that section to keep any accounts or record in accordance with the direction,- he shall be liable to pay in addition to any tax for which he may be liable, a penalty of an amount as follows: -

(i) Where there has been a contravention referred to in clause (a) (i) or (iii) a penalty of an amount 4[not less than rupees two thousand but not exceeding the amount collected by way of tax]

(ii) Where there has been a contravention referred to in 5[clause (a) (ii) or clause (b)], a penalty of an amount not exceeding two thousand rupees, and in addition any sum collected by the person by way of tax in contravention of section 46] shall be forfeited to the State Government. When any order of forfeiture is made, the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.

(2) If the Commissioner in the course of proceeding under this Act or otherwise has a reason to believe that any person has become liable to 6[a penalty or forfeiture or both penalty and forfeiture] of any sum under sub-section (1) he shall serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause why 5 [a penalty or forfeiture or both penalty and forfeiture] of any sum as provided in sub-section (1) should not be imposed on him.

(3) The Commissioner shall thereupon hold an inquiry and shall make such order as he thinks fit.

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

1. Substituted by Mah. 40 of 1969. s. 6(a).

2. Sub-clause (ii-a) and (ii-al) deleted by Man. Tax Laws (Levy and



Amendment) Act, 1995.

4. Substituted for the words "not exceeding two thousand rupees or double the sum collected by way of tax whichever is less" by Mah. Act 19 of 1996.

5. Substituted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

6. Deemed to have been substituted by Mah. 40 of 1969, s. 6(b).

### **38. Payment of tax, and deferred Payment of tax etc :-**

(1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.

1[(2) A Registered dealer furnishing return as required by sub-section (1) of section 32, shall first pay into a Government treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the period covered by a return alongwith the amount of 2[penalty or interest or both] payable by him under section 36.

(3) A Registered dealer furnishing a revised return in accordance with sub-section (3) of section 32, which revised return shows that a large amount of tax than already paid is payable, shall first pay into a Government treasury the extra amount of tax.

(4)

(a) The amount of tax- (i) 3[\* \*] due where returns have been furnished without full payment thereof, or

(ii) assessed or reassessed for any period under section 33 or section 35 less any sum already paid by the dealer in respect of such period, 4[or]

5[(iii) assessed under sub-section (3) of section 41. and]\_\_\_\_\_ 1[or interest or both] (if any)

levied under section 36 and 37 2[\* (c) the sum (if any) forfeited to the State Government under section 37, 3[and (d) the amount of fine (if any) imposed under sub-section (3) of section 53] 4[and]

[(e) any other dues under this Act]: shall be paid by the dealer or the person liable therefor into a Government treasury by 5[within thirty days from the date of service of the notice issued by the Commissioner in respect thereof]: Provided that, the Commissioner

[\* \*] may, in respect of any particular dealer or person and for reasons to be recorded in writing extend the date of payment or allow him to pay the tax or penalty 7[or interest] (if any) or the sum forfeited by installments 8[but such extension or grant of installment to pay tax shall be without prejudice to the levy of

penalty, interest, or both:] 9[Provided further that, the Commissioner may, in respect of a dealer to whom an Eligibility Certificate has been granted 10[\* \*] extend the date of payment or grant a moratorium for payment of the dues or provide for payment of the dues thereafter in installments, subject to such conditions as may be prescribed ]: 11[Provided also that, notwithstanding anything contained In this Act or in the rules made thereunder but subject to such conditions as the State Government or the Commissioner may by general or special order specify, where a dealer to whom incentive by way of deferment of sales tax or purchase tax or both 12[under the 1979 Scheme, the 1983 Scheme or, as the case may be, the Electronic Scheme falling under [the 1988 or the 1993] Package Scheme of Incentives designed by the State Government] have been granted by virtue of Eligibility Certificate, and where a loan liability equal to the amount of any such tax payable by such dealer has been raised by the SICOM or the relevant Regional Development Corporation 14[or the District Industries Center concerned] then such tax shall be deemed, in the public interest, to have been paid. Provided also that, notwithstanding anything contrary contained un the Act or in the rules or in any of the Package Schemes of Incentives or in the Power Generation Policy 1998, the Eligible Unit to whom an Eligibility Certificate has been granted for availing of the incentives by way of deferment of Sales Tax, Purchase Tax, Additional Tax, Turnover Tax or Surcharge, as the case may be, may, in respect of any of the periods during which the said certificate is valid, at its option, prematurely pay in place of the amount of tax deferred by it an amount, equal to the net present value of the deferred tax as may be prescribed, and on making such payments, in the public interest, the deferred tax shall be deemed to have been paid. (5) Any tax, penalty 15[interest] or sum forfeited which remains unpaid after the 16[service of notice under sub-section (4) or,] any installment not duly paid, shall be recoverable as arrears of land revenue. 17[(6) Notwithstanding anything contained in this Act or in any law for the time being in force, 1[A refund of such sum or any part thereof can be claimed from Government by person from whom it was realised by way of tax, provided such person has not resold the goods within a period of two years from the date of purchase; and an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture.] on receipt of any such application, the Commissioner shall hold inquiry as he deems fit, and 2[if the

applicant proves to the satisfaction of the Commissioner that the goods are not resold by him as aforesaid and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered, and no draw-back, set-off, refund or remission in respect of that amount was granted, he shall refund the sum or part thereof, which is found due to the person concerned.]

3[(6A) (i) On the commencement of the Maharashtra Tax Laws (Levy, Amendment and Repeal) Act, 1989, there shall be established a fund to be called the Maharashtra Consumer Protection and Guidance Fund (hereinafter, in this section, referred to as "the Fund"). From the amounts forfeited and recovered except for the amounts refunded as aforesaid to the purchasers and except for the amounts in respect of which a draw-back, set-off, refund or remission is granted, and after deducting the expenses of collection and recovery as determined by the State Government, the remaining amounts shall under appropriation duly made by law in this behalf, be entered into, and transferred to that Fund. (ii) No sum from the Fund shall be paid or applied for any purpose other than the one specified in clause (iii). (iii) The Fund shall be administered in the prescribed manner; and the amount in the Fund shall be utilised for meeting the expenses of any activities related to consumer protection and guidance as the State Government may direct, and for giving grant in the prescribed manner to any voluntary consumer organisation, society, association, body or institution engaged in providing for the better protection of the interests of the consumers and having such qualifications as may be prescribed.]

4 [(7) Where any sum so forfeited is paid into the Government treasury or recovered as an arrear of land revenue at any time before the commencement of the Bombay Sales Tax (Amendment) Act, 1969, a claim for refund may be made by the person concerned to the Commissioner in accordance with sub-section (6) within one year from such commencement.]

1 Sub-section (2) was substituted for the original by Mah. 9 of 1984, s.6.

2 These words were inserted by Mah. 11 of 1987 s. 14(a).

3 The word "assessed" was deleted by Bom 69 of 1959 s. 11.

4 This word was substituted for the word "and" by Man. 21 of 1962, s. 16(1).

5 Sub-clause (iii) was inserted by Mah. 21 of 1962, s.16(2).

1 Inserted by Mah. 11 of 1987 s.14(b)(i).

3 This portion was inserted by Mah. 62 of 1974, s.8.

4 Inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

5 Substituted for the words "such date as may be specified in notice issued by the Commissioner, for this purpose, being a date not earlier than thirty days from the date of service of the notice" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

7 Inserted by Mah. 11 of 1987 s. 14(b)(ii).

8 Added by Mah. 24 of 1990, s. 8.

9 This proviso was inserted by Mah. 32 of 1981, s.31(a).

10 The portion beginning with the words "by the State" and ending with the words "Maharashtra State" was deleted by Mah. 15 of 1985, s.4.

11 This proviso was added by Mah. 11 of 1987 s. 14(b)(iii).

12 This portion was inserted by Mah. 2 of 1989 s.2.

14 Inserted and deemed to be inserted w.e.f. 1.10.1993 by Mali. :29of 1994.

15 This word was inserted by Mah. 11 of 1987 s. 14(4).

16 Substituted for the words "dates specified in the notice for payment or after the extended due of payment" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

17 Sub-section (6) was deemed always to have been added by Mah. 40 of 1969, s. 7(a).

1 Substituted by Mah. 9 of 1989, s. 18(a)(i).

2 Substituted by Mah. 9 of 1989. s,18(a)(ii).

3 Sub-section (6A) inserted by Mah. 9 of 1989, s. 18(6).

4 Sub-section (7) was added by Mah. 40 of 1969, s. 7(6).

### **38A.** Rounding Off The Tax, Etc :-

1 [:- The amount of tax, penalty, interest, composition money, fine or any other sum payable, and the amount of draw-back, set-off or refund due under the provisions of this Act, shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored: Provided that, nothing in this section shall apply for the purpose of collection by the dealer or any amount by way of tax under this Act.]

1. Section 38A was inserted by Mah. 32 of 1973, s.3

**38B.** Special Powers Of Sales Tax Authorities For Recovery Of Lax As Arrears Of Land Revenue :-

(1) For the purpose of effecting recovery of the amount of tax, penalty, 2 [interest], and amount forfeited, due and recoverable from any dealer or other person by or under the provisions, of this Act, as arrears of land revenue-

(i) the Commissioner of Sales Tax shall have and exercise all the powers and perform all the duties of the Commissioner under the Maharashtra Land Revenue Code, 1966;

(ii) the Additional Commissioner of Sales Tax shall have and exercise all the powers and perform all the duties of the Additional Commissioner under the said Code;

(iii) the Deputy Commissioner of Sales Tax shall have and exercise all the powers and perform all the duties of the Collector under the said Code;

(iv) "[the Senior Assistant Commissioner and Assistant Commissioner] of Sales Tax shall have and exercise all the powers (except the powers of arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Assistant or Deputy Collector

(v) the Sales Tax Officer shall have and exercise all the powers (except the power of confirmation of sale and arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Tahsildar under the said Code.

1. Section 38B was inserted by Mah. 32 of 1981. s.32.

2. Substituted by Mah. 9 of 1989, s. 18(a)(i).

**38C.** Liability Under This Act To Be First Charge :-

[ Notwithstanding anything contained in any contract to the contrary but subject to any provision regarding first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, 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.]

1. Section 38C inserted by Man. Act 17 of 1999 w.e.f. 6.2.1999.

**39.** Special mode of recovery :-

[(1) If during the course of inquiry in any proceedings of

assessment or reassessment or revision or of recovery of any tax or for recovery of any other sums recoverable under this Act from any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, the Commissioner is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, then he may, notwithstanding anything contained in any law for the time being in force or any contract to the contrary, attach provisionally by notice in writing any money due or which may become due to such person or dealer from any other person or any money

2[Provided that, the Commissioner may, by order, revoke such notice if the dealer furnishes, to the Commissioner, in the prescribed manner and in such time such security, for such period, as may be specified, in the said order.]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the notice issued under sub-section (1): Provided that, the Commissioner may, for reasons to be recorded in writing extend the aforesaid period by such further period or periods as he thinks fit, so however, that the total period of extension shall not in any case exceed two years.

(3) 3[ Within a period of fifteen days of the service of any notice under sub-section (1) or, from the date of order, if any, extending the period under sub-section (2), as the case may be, the Commissioner shall, on an application in writing by such person or dealer, afford such person or dealer a reasonable opportunity of being heard, and the Commissioner may thereafter, having regard to the circumstances of the case, modify, cancel or confirm the said notice or order, as the case may be.

(4) The powers under this section shall be exercised by the 4[Commissioner himself or Additional Commissioner or, as the case may be, by any Deputy Commissioner] to whom such powers have been delegated, by order in writing by the Commissioner.

5[(5) Notwithstanding anything contained in section 56, a person aggrieved by an order passed under sub-section (3) may, within sixty days from the date of receipt of such order, make an application to the Tribunal in the prescribed form, and thereupon, the Tribunal may call for and examine the record of any such order and pass such order thereon as it thinks just and proper.]

6 [(6) When; a notice under sub-section (1) is served upon any person provisionally attaching any money, then, such person shall be personally liable so long as the attachment notice is not

revoked, to pay to the Commissioner, the amount of money so attached.]

1. Section (39-1 A) inserted by Mah. 9 of 1989. s.19.
2. Proviso added by Mah. 9 of 1997.
3. Sub-sections (3) and (4) substituted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.
4. Substituted for the words "Commissioner himself or any Deputy Commissioner" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.
5. Sub-section (5) added by Mah. 11 of 1992 as amended by Mah. XVIII of 1994 w.e.f. 1.4.1994.
6. Sub-section (6) added by Mah. IX of 1996.

**39A.** Continuation And Validation Of Certain Recovery Proceedings :-

1[ (1) Where any notice of demand in respect of any tax, penalty 2 [or interest] (hereinafter in this section referred to as "Government dues") is served upon a dealer or the person liable therefor under subsection (4) of section 38. and any appeal, revision application or other proceedings is filed or taken respect of such Government dues, then

(a) where such Government dues are enhanced in such appeal, revision or proceeding, The Commissioner shall serve upon the dealer or person, as the case may be, another notice only in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal, revision or proceeding may, without the service of any fresh notice, be continued, from the stage at which such proceedings stood immediately before such disposal:

(b) where such Government dues are reduced in such appeal, revision or proceedings,-

(i) it shall be necessary for the Commissioner to serve upon the dealer or person a fresh notice;

(ii) the Commissioner shall give intimation of the fact of such reduction to him;

(iii) any recovery proceedings initiated on the basis of the notice or notices of demand served upon him before (lie disposal of such appeal, revision application or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the dealer or person after the disposal of such appeal, revision application or proceeding or that such Government dues have been enhanced or reduced in such appeal, revision or proceeding:

Provided that, where any Government dues are reduced in such appeal, revision or proceeding and the dealer or person is entitled to any refund thereof, such refund shall be made in accordance

(2) For the removal of doubts, it is hereby declared that no fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in appeal, revision or proceeding under this Act.

(3) The provisions of this section shall apply and shall be deemed always to have applied, in relation to every notice of demand served by the Commissioner upon a dealer or any other person liable for any Government dues, whether such notice was or is served before or after the commencement of the Bombay Sales Tax (Amendment) Act, 1965.]

1. Section 39A was inserted by Mah. 29 of 1965. s.17.

2. These words were inserted by Mah. 11 of 1987 s. 17. with the provisions of section 43;

#### **40. Lump-sum payment of tax :-**

(1) The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit any dealer to pay in lieu of the amount of tax payable by the said dealer under the provisions of this Act, in respect of any period, a lump sum determined in the prescribed manner by way of composition; and on payment of such lump sum by such date as may be prescribed for such purpose, the dealer shall be deemed to have been assessed under section 33 of that period.

(2) Where any such dealer contravenes any of the rules made under sub-section (1) and the Commissioner is of the opinion that such contravention has resulted into loss to revenue of an amount which is not less than the amount of lump sum so payable, then the Commissioner may at any time within five years from the end of the year for which such lump sum amount were payable, after giving the dealer a reasonable opportunity of being heard, proceed



to revoke the permission granted under sub-section (1) in so far as the permission relates to the said year and such revocation shall be effective from the first day of the year, and on such order or revocation being passed, it shall be deemed for all the purposes of this Act that the dealer has not been assessed as provided in sub-section (1) in respect of the said year and accordingly, the Commissioner may, notwithstanding anything contrary contained in sub-section (4A) of section 33, after giving the dealer a reasonable opportunity of being heard, proceed to assess, levy and collect tax, penalty and interest if any, from such dealer in respect of the said year.

(3) No dealer who has been permitted to pay lump sum shall, in respect of any sale made by him during the period covered by such permission issue or sign or authorise any person to sign a certificate as prescribed in sub-section (1) of section 12A or a certificate in Form 31 as prescribed under the rules and accordingly where any dealer so permitted issues any such certificate, it shall be invalid and shall be deemed to have been invalid on the date of such sale.

(4) If such dealer does not pay the lump sum amount on the prescribed date, then he shall be liable to pay, by way of simple interest, a sum equal to 2 per cent of such amount, for each month or for part thereof after such date.]

1. Section 4] was re-numbered as sub-section (1) of the section by Mah. 21 of 1962, s. 17.

**40A.** Lump-Sum Payment In Lieu Of Tax On Lottery Tickets :-

(1) Notwithstanding anything contained in any other provisions of this Act, any dealer dealing in Lottery Tickets may, at his option, pay, in lieu of the amount of tax payable by him, in respect of turnover of sales of tickets of a Passive Lottery (i.e. a Lottery in which the Lottery Tickets of fixed value are pre-printed and sold), in lump sum as stated in the Table hereunder

Provided that, where a dealer has paid the tax under this sub-section in respect of the sale of Lottery Tickets of a particular name and type of Lottery Ticket of a particular State and for a particular draw, no tax shall be payable in respect of the sale of such Lottery Tickets by any other dealer or any person in this State who is liable to pay tax under this Act.

(2) Notwithstanding anything contained in any other provisions of this Act, tax payable under sub-section (1) shall be paid in ten days prior to the date of the draw.

#### **41. Exemptions :-**

1[(I)) Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or purchases from the payment of the whole or any part of any tax payable under the provisions of this Act 2 [\* \*].

[(2) When: any dealer or person has purchased any goods under a declaration given by him under any of the notifications issued under this section and-

(a) any of the conditions subject to which such exemption was granted, or

(b) any of the recitals or the conditions of the declaration, are not complied with, for any reason whatsoever, [or, in any other case, where such dealer or person was not entitled to issue [such declaration, then without prejudice to the other provisions of this Act ]] such dealer or person shall be liable to pay purchase tax on purchase price of the goods so purchased, and the purchase tax shall be levied at the rate set out against each of such goods in column 4 of Schedule B and Council, notwithstanding that such dealer or person was not liable to pay tax under section 3, and accordingly the dealer or person who has become liable to pay purchase tax under this section shall file a return in the prescribed form to the prescribed authority within the prescribed time and shall include the purchase price of such turnover in his return, and pay the tax in the prescribed manner. The tax due from any such dealer or person shall be assessed and reassessed under section 33 or 35, as the case may be: Provided that, the amount of tax (if any) paid by the dealer or such person to a Registered dealer on such purchases, on which he has become liable to pay purchase tax under this section shall be set off against the purchase tax so leviable.]

[Provided further that, of the dealer or the person is liable to pay purchase tax as aforesaid has been assessed to purchase tax and if he has paid such tax, then the dealer from whom such goods are purchased shall be exempted from payment of tax on sales of such goods to the extent of such purchase tax has been paid]

(3) If the Commissioner has reason to believe that any person is liable to pay tax under subsection (2) the Commissioner shall, after giving him a reasonable opportunity of being heard, assess the amount of tax so due.]

1. Section 4] was re-numbered as sub-section (1) of the section by Mah. 21 of 1962, s. 17.
2. The following portion deleted by Mah. Ord. IV of 1997 w.e.f. 28.1.1997

**41A.** Edible Oil Unit Not To Be Eligible For Exemption From Payment Of Tax :-

Notwithstanding anything contained in this Act or in any judgement, decree or order of any Court or Tribunal to the contrary, on or after the date of commencement of Bombay Sales Tax (Amendment) Act, 1985 (hereinafter in this section referred to as "the commencement date"), the Eligibility Certificate granted to any Registered dealer of an Edible Oil Unit in accordance with the provisions of any Package Schemes of Incentives shall cease to have any effect in relation to the exemption from payment of tax under this Act or under the Central Sales Tax Act, 1956, and the Certificate of Entitlement issued in favour of such Registered dealer by the Commissioner under entry 136 of the Schedule to the notification issued under section 41 shall stand automatically cancelled on the commencement date and such Registered dealer shall not be entitled to claim any further benefit of exemption from payment of such tax under the Eligibility Certificate or the Certificate of Entitlement on and after the commencement date, and he shall surrender the Certificate of Entitlement together with all the unused Form BC which have been attested by the Sales Tax authorities to the Commissioner forthwith and in any case on or before the 31<sup>st</sup> day of August 1985, unless he has already surrendered the same earlier]:

[Provided that, nothing in this section shall apply to the eligible units covered under the 1993

**41B.** Calculation Of Cumulative Quantum Of Benefits Under Package Scheme Of Incentives :-

1) In order to determine whether the cumulative quantum of benefits received by any dealer to whom a Certificate of Entitlement has been granted by the Commissioner under entry 136 1 [or, as the case may be, under entry E-3] of the Schedule to the notification issued under section 41, has at any time after the 1<sup>st</sup> January 1980 exceeded the relevant monetary ceiling under any Package Schemes of Incentives for any period whether before or after the commencement of the Maharashtra Tax Laws (Levy and

Amendment) Act, 1994 (hereinafter in this section referred to as "the commencement date"), the Commissioner shall calculate the cumulative quantum of benefits in the manner prescribed in respect of all the relevant periods and the Package Schemes of Incentives.

(2) If it is found that the cumulative quantum of benefits so calculated in respect of any Eligible Unit has exceeded the relevant monetary ceiling where such ceiling is provided un the Package Schemes of Incentives, then Commissioner shall, require the dealer by order in writing to pay the tax, interest and penalty in respect of each relevant period and shall for the purpose of recovery of such tax, interest and penalty, serve on the dealer a notice: Provided that, no order under this section shall be passed without giving the dealer a reasonable opportunity of being heard.

(3) The notice so issued shall be deemed to be a notice issued under sub-section (4) of section 38 and the relevant provisions of this Act shall apply to such notice as they apply to a notice issued under sub-section (4) of section 38.]

1. Inserted by Mah. Act 19 of 1996 w.c.f. 1.10.1995.

**41BA.** Certificate Of Entitlement :-

Where an Eligibility Certificate has been recommended to an Eligible Unit by the Implementing Agency under any of the Package Schemes of Incentives declared by the Government such Eligible Unit may apply for grant of Certificate of Entitlement to the Commissioner. Subject to the provisions of Section 41BB and any rules that may be made in this behalf, the Commissioner shall, if the Eligible Unit satisfies such further requirements as may be prescribed or notified, issue to the unit a Certificate of Entitlement in such form, and subject to such conditions as may be prescribed.]

1. Section 41BA and 41BB inserted by the Mah. Tax Laws (Levy and Amendment) Act. 2001.

**41BB.** Proportionate Incentives To An Eligible Unit In Certain Contingencies :-

(1) Notwithstanding anything to the contrary contained in any Package Schemes of Incentives, any Eligible Unit, to whom the Eligibility Certificate has been granted, shall be eligible to draw the benefits in the current year or in any year, whether preceding or succeeding the date of commencement of section 12 of the Maharashtra Tax Laws (Levy and Amendment) Act, 2001, only on

the part of its turnover of sales or purchases as may be arrived at by the State Government to the total turnover of sales or purchases of the said unit in that year and different ratios may be prescribed for different classes of dealers and different schemes.

(2) The benefits availed of by an Eligible Unit in contravention of sub-section (1), if any, shall be and shall be deemed to have been withdrawn and such unit shall be liable to pay tax in respect of the turnover of sales or purchases in excess of the turnover arrived at under sub-section (1) and accordingly any benefit which is withdrawn shall be recovered as arrears of tax as provided in subsection (3).

(3) For recovery of arrears of tax as provided in sub-section (2), the Commissioner shall require the unit, by order in writing, to pay the tax, interest and penalty in such turnover on which the benefits are not available and serve on the dealer notice of demand accordingly: Provided that, no order under this section shall be passed without giving the dealer a reasonable opportunity of being heard.

Explanation - For the purposes of the provisions contained in Sections 41BA and 41BB, the terms "Existing Unit, Eligible Unit, Implementing Agency, Eligibility Certificate and Certificate of Entitlement" shall have the same meaning as provided in the relevant Package Schemes of Incentives,]

#### **41C.** Cancellation Of Entitlement :-

(1) Notwithstanding anything contained in this Act,

(a) shall be deemed to have been automatically cancelled on the date on which- 1[(i) the cumulative quantum of benefits received by such unit- (A) being a Small Scale Industrial unit governed by the 1979 Package Schemes of Incentives 2[as calculated from the 1st October, 1995, exceeds] the approved gross fixed capital investment of such Unit at the time of grant of the Eligibility Certificate, or

(B) not being an Unit referred to in entry (A) above, exceeds at any time whether before or after, the date of commencement of Maharashtra Tax Laws (Levy and Amendment) Act, 1995, the monetary ceiling as provided in the relevant Package Schemes of Incentives.] (ii) the period for which a Certificate of Entitlement was granted to an Eligible Unit, expires; or (iii) the certificate of registration granted to an Eligible Unit has been cancelled; (b) shall be cancelled by the Commissioner, after giving the Eligible Unit an

opportunity of being heard, if it is noticed that the grant of the Certificate of Entitlement is inconsistent with any of the provisions of this Act, rules or notifications framed or issued under the Act or any of the relevant Package Schemes of Incentives.

(2) On and from the date of such cancellation, such unit shall cease to be eligible to claim any exemption from payment of tax under entry 136 3 [or, as the case may be, under entry E-3] of the Schedule to the notification issued under section 41, and such unit shall surrender to the Commissioner, the Certificate of Entitlement together with all declarations in Form BC, within fifteen days from the date of such cancellation.]

1. Substituted by Mah. Tax Laws (Levy and Amendment) Act, 1995.

2. Substituted and deemed to have been substituted w.e.f. 1.10.1995 by Mah. Act 19 of 1996.

3. Inserted by Mah. Act 19 of 1996 w.e.f. 1.10.1995.

**41D.** Annual Ceiling On Benefits To Be Availd Of Under Package Scheme Of Incentives :-

(1) Notwithstanding anything contrary contained in any of the Package Schemes of Incentives, no Eligible Unit to whom the Eligibility Certificate has been granted shall be eligible to draw the benefits in any year, whether preceding or succeeding the date of commencement of Maharashtra Tax Laws (Levy and Amendment) Act, 1995, in respect of the production in excess of the annual production capacity of that unit as may be prescribed by the State Government, having regard to licensing provisions of the Industries (Development and Regulation) Act, 1951

(2) The benefits availed of by any Eligible Unit in contravention of sub-section (1) shall be and shall be deemed to have been withdrawn and such Unit shall be liable to pay the tax in respect of sales or purchase, in so far as they relate to such excess production referred to in sub-section (1).)

1. Inserted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

**42.** Drawback, set-off, refund, etc :-

1[(1)] The State Government may by rules provide, that-

(a) in such circumstances and subject to such conditions as may be specified in the rules a draw-back, set-off or refund of the whole or

any part of the tax,-

(i) paid or levied or leviable under any earlier law in respect of any earlier sales or purchases of goods which are held in stock by a dealer at the commencement of this Act, be granted to such dealer, or

(ii) paid or levied in respect of any earlier sale or purchases of goods under this Act or any earlier law, be granted to 2[purchasing dealer, or]

3[(iii) paid or levied or leviable under the Maharashtra tax on Entry of Motor Vehicles into Local Areas Act, 1987 , be granted to a dealer whose principal business is of buying or selling motor vehicles.]

(b) for the purpose of the levy of tax under the provisions of this Act the sale price or purchase price shall in the case of any class of sales or purchases be reduced to such extent, and in such manner, as may be specified, in the rules.

[(2) Where no tax has been charged separately, the rate of tax applicable for the purposes of calculating the amounts of drawback, set-off or refund in respect of any earlier sale or purchase of goods, or for the purposes of reduction of sale or purchase price for levy of tax, or for the purposes of calculating The amount of reimbursement under section 44, shall be the rate set-out against the goods in the relevant Schedule:

Provided that, where, under any notification issued under this Act, any of the sales or purchases of goods has been exempted from the payment of the whole of sales tax (or purchase tax), the rate of tax applicable shall be nil: and where it is exempted from payment of any part of sales tax (or purchase tax), the rate of tax applicable shall be the rate at which the payment of tax is to be made by virtue of such exemption.]

4 [(3) Notwithstanding anything contained in this Act or the Rules made thereunder, the amount of drawback, set-off or as the case may be, refund shall not exceed the amount of tax received in respect of any sale or purchase of same goods, into the Government Treasury, except where purchase tax is payable by the claimant dealer on the purchase of same goods effected by him:

Provided that, the sales tax levied or leviable under the Act, is deferred or deferrable under the Package Schemes of Incentives implemented by the State Government, then it shall be deemed to have been received in the Government Treasury for the purpose of this sub-section.]

1. Rc-numbered as sub-section (1) and after sub-section (1) so

renumbered, sub-section (2) inserted by Mah. 10 of 1991.

2. Substituted for the words "Purchasing dealer" by Mah. 9 of 1988, s.23(a).

3. Sub-clause (iii) added by Mah. 9 of 1988. s.23(b).

4. Sub-section (3) substituted by Mah. Act 21 of 1998.

### **43. Section 43 :-**

#### **43A. Interest On Amount Of Refund :-**

(I) Where, in pursuance of any order passed under this Act. in respect of any period of assessment commencing on or after the 1st April 1995, refund of any tax becomes due to a Registered dealer, he shall, subject to rules, if any, be entitled to receive, in addition to the refund, simple interest, at the rate of twelve per cent per annum for the period commencing on the date next following the last date of the period of assessment to which such order relates and ending on the date of such order or for a period of eighteen months. whichever is less. The interest shall be calculated on the amount of refund due to the dealer in respect of the said period after deducting therefrom the amount of penalty and interest, if any, charged in respect of the said period and also the amount of refund if any, 1 [adjusted towards any recovery under this Act or, as the case may be, under the Central Sales Tax Act, 1956 .] If as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

Explanation - For the purposes of this section, where the refund of tax, whether in full or in part, includes any amount of refund on any payment of tax made after the date prescribed for filing of the last return for the period of assessment, then the interest, in so far as it relates to the refund arising from such payment, shall be calculated from the date of such payment to the date of such order.]

1. Substituted and deemed to have been substituted w.e.f. 1.4.1995 for the words "adjusted towards any recovery" by Mah. 51 of 2000.

### **44. . :-**

1 [ Refund of tax on declared goods in the course inter-State Where



any Declared goods are sold by a dealer in the course of inter-State trade or commerce and tax has been paid by him under the Central Sales Tax Act, 1956, in respect of the sale of such goods in the course of inter-State trade or commerce and such dealer shows to the satisfaction of the Commissioner that a tax under this Act or any earlier law has been levied in respect of any earlier sale or purchase of such goods made in the State after the 1st day of October 1958, then an amount equal to the tax so levied shall be reimbursed to such dealer making such sale in the course of inter-State trade or commerce, in such manner and subject to such conditions as may be prescribed.]

1. Substituted by Mah. 32 of 1973.

**44A.** Interest On Delayed Refunds :-

1(1) Where an amount required to be refunded by the Commissioner to any person by virtue of an order issued under this Act is not so refunded to him within ninety days of the date of the order, the State Government shall pay such person simple interest, 2[at nine per cent per annum] on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund.] 3 [Provided that, where the amount becomes refundable by virtue of an order of the Tribunal, the interest under the provisions of this section shall be payable from the date immediately following the expiry of the period of ninety days from the date of receipt of the order of the Tribunal by the officer whose order forms the subject of the appeal or revision proceedings before the Tribunal, to the date of refund.]

Explanation - If the delay in granting the refund within the period of ninety days aforesaid is attributable to the dealer, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner, whose decision shall be final.]

1. Section 44A was inserted by Mah. 29 of 1965, s.19.

2. Substituted for the words "at four and half per cent per annum" by Mah. 42 of 1971, s.5.

3. Proviso inserted by Mah. 24 of 1985, s. 5.

**44B.** Power To Withhold Refund In Certain Cases :-

(1) Where an order giving rise to a refund is the subject-matter of

appeal or further proceeding or where any other proceeding under this Act is pending, and the authority competent to grant such refund is of the opinion that grant of the refund is likely to adversely affect the revenue, such authority may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.

(2) Where a refund is withheld under sub-section (1), the State Government shall pay interest in accordance with the provisions of the last proceeding section on the amount of refund ultimately determined to be due to the person as a result of the appeal or further proceeding, for the period from the date immediately following the expiry of ninety days from the date of order referred to in sub-section (1), to the date of refund.]

#### **45. Remission of Tax :-**

The Commissioner may, in such circumstances and subject to Supreme Court conditions as may be prescribed, remit the whole or any part of the tax payable, in respect of any period, by any dealer:

Provided that, if the amount to be remitted exceeds two thousand rupees, the remission of the excess shall not be made without the previous sanction of the State Government.

#### **45A. Power Not To Recover Lax Not Levied Or Short Levied As A Result Of General Practice :-**

Notwithstanding anything contained in this Act, or in any judgement, decree or order of any Court or Tribunal, if the State Government is satisfied-

(a) that practice was, or is generally prevalent regarding levy of tax on any class of sales or purchases at a lower rate than the rate at which the tax is leviable or not to levy any tax on any class of sales or purchases; and

(b) that such class of sales or purchases were, or are, liable-

(i) to tax, in cases where according to the said practice, the tax was not, or is not being levied; or

(ii) to higher rate of tax than what was, or is being, levied according to the practice, then the State Government may, by notification in the Official Gazette, direct that the whole of the tax payable on such class of sales or purchases or as the case may be, the tax in excess of that payable on such class of sales or

purchases, taut for the said practice, shall not be required to be paid in respect of the class of sales or purchases of which the tax was not, or is not being, levied or was, or is being, short levied, in accordance with the said practice.]

#### **46. Prohibition against collection of tax in certain cases :-**

(1) No person shall collect any sum by way of tax in respect of sales of any goods on which by virtue of section 5 no tax is payable.

(2) No person, who is not a Registered dealer and liable to pay tax in respect of any sale or purchase, shall collect any sum by way of tax from any other person 1 [and no Registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act:] Provided that, this sub-section shall not apply where a person is required to collect such amount of tax separately in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

(3) Notwithstanding anything contained in sub-section (2), a dealer who has been permitted by the Commissioner to pay a lump-sum payment under section 40 shall not collect any sum by way of tax on the sales of goods if made during the period to which such lump-sum payment applies.

1. Deemed always to have been inserted by Mah. 21 of 1962. s. 18.

#### **47. Memorandum of saies or purchases :-**

:-

1[(1)] If-

(a) a Registered dealer sells goods to another Registered dealer; or  
(b) a Registered dealer whose turnover of sales has 2[exceeded one lakh rupees] in the previous year, sells in the current year any goods 3[exceeding 4[twenty five rupees]] in value in any one transaction to any other person; he shall issue to the purchaser a bill or cash memorandum serially numbered, signed and dated by him or his servant, manager or agent, and showing therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated, and preserve it for a period of not less than three years from

the date of sale.

5 [(2) The State Government may, by rules provide for such electronic system as may be used, if necessary, in conjunction with such automatic Data Processing Machines, as may be prescribed whereby the details of the bill or cash memorandum, may be preserved in such form and manner as may be approved by the Commissioner and any dealer may apply to the Commissioner to permit him to maintain the record of the bills or cash memoranda in such system.

(3) On such permission being granted under sub-section (2), the dealer shall stand exempted from complying with the requirements specified in clause (b) of sub-section (1), regarding keeping counterfoils or duplicates of the said bills or cash memoranda and the further requirement of signing the cash memoranda or bills.]

1. Renumbered as sub-section (1) by the Mah. Tax Laws (Levy and Amendment) Act, 2001.

2. Substituted by Mah. 32 of 1981, s.36(a).

3. Substituted by Mah. 32 of 1981, s.36(b).

4. Substituted for the words "ten rupees" by Mah. Act IX of 1996.

5. Sub-section (2) and (3) added by Mah. Tax Laws (Levy and Amendment) Act, 2001.

## **CHAPTER 6** Liability to produce accounts and supply information

### **48. Accounts :-**

:-

(1) Every dealer liable to pay tax under this Act, and every other dealer who is required so to do by the Commissioner by notice served on him in the prescribed manner, shall keep a true account of the value of the goods purchased or sold by him.

(2) If the Commissioner considers that the accounts kept are not sufficiently clear or intelligible to enable him to determine where or not a dealer is liable to tax during any period, or are so kept as to enable proper scrutiny of the returns or the statement furnished, the Commissioner may require such dealer by notice in writing to keep such accounts (including records of sales or purchases) in such form or manner as in his opinion is necessary for the purpose of proper assessment and as he may, subject to anything that may be prescribed in this behalf, in writing direct.

( 3 ) The Commissioner may, subject to such conditions and restrictions as may be prescribed in this behalf, by notice in writing direct any dealer, to maintain accounts and records showing such

particulars regarding their purchases, sales or deliveries of goods, in such form, and in such manner, as may be specified by him.

(4) Every registered dealer shall ordinarily keep all his accounts, registers and documents relating to his stocks of goods, or to purchases, sales and deliveries of goods made by him, at the place or places of business specified in his certificate of registration or, with previous approval of the Commissioner, at such other place as may be agreed to by the Commissioner.]

#### **49. Production and inspection of accounts and documents and search of premises :-**

(1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer to produce before him any accounts or documents, or to furnish any information, relating to stocks of goods, or to sales, purchases and deliveries of goods by, the dealer, or any information relating to his business, as may be necessary for the purposes of this Act.

1[(2) All accounts, registers and documents relating to stocks of goods of, or to purchases, sales and deliveries of goods by, any dealer and all goods and cash kept in any place of business of any dealer, shall at all reasonable time to be open for inspection by the Commissioner, and the Commissioner may take or cause to be taken such copies or extracts of the said accounts, registers and documents and such inventory of the goods and cash found as appear to him necessary for the purposes of this Act.)

(3) If the Commissioner has reason to believe that any dealer 2[has evaded or] is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, seize such accounts, registers and documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for a prosecution.

(4) For the purposes of sub-section (2) or sub-section (3), the Commissioner may enter and search any place of business of any dealer, or any other place where the Commissioner has reason to believe that the dealer keeps or is for the time being keeping any accounts, registers and documents of his business or stocks of goods relating to his business.

3 [(5) Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of search, it shall be presumed, unless the contrary is

proved, that such books of accounts, other documents, money or goods belong to such person.)

1. Sub-section (2) was substituted by Mah. 29 of 1965. s.20.

2. Inserted by Bom 69 of 1959 s. 13.

3. Sub-section (5) was added by Mah. 32 of 1981, s.37.

**49A.** Special Powers For Reconstitution Of Records Destroyed By Fire In Bombay On 26Th October 1964 :-

(1) In this section, the expression "fire" means the fire which broke out on the 26th day of October 1964 in the buildings in the Swadeshi Mills Compound, Charni Road, Bombay

(2) If the Commissioner is satisfied that any records pertaining to a dealer have been destroyed by fire, he may by notice in writing require the dealer to attend before him on a date and at a place specified in the notice, or to produce before, him any accounts, or registers or documents or copies thereof or to furnish fresh returns under this Act, or any earlier law for such period, by such dates and to such authority as may be stated in the notice (being returns for a period for which the dealer has not yet been assessed), or to furnish true copies of or extracts from any documents already submitted to the Commissioner on or before the 26th day of October 1964, or to furnish any other information relating to the business of the dealer as may be specified in the notice, being information which the Commissioner considers it necessary for facilitating the work of assessment (including reassessment) or the collection of the tax from such dealer under this Act or under this Act or under any earlier law.

(3) Without prejudice to the generality of the powers conferred by sub-section (2) the Commissioner may require the dealer to produce for inspection or furnish copies of or extracts from all or any of the following namely:(a) application for Registration Certificate, Licence, Authorization, Recognition or Permit Section 22 Section 23 Section 24 Section 25 Section 26 , as the case may be; (b) Registration Certificate, Licence, Authorization, Recognition or Permit granted to the dealer; (c) return furnished by the dealer; (d) proof of payment of tax and penalty by the dealer; (e) a certified copy of the assessment order given to the dealer; (f) any notice of demand served on the dealer; (g) any declaration made under Section 50 ; (h) specimen signatures under R.13A of the Bombay Sales Tax Rules, 1959; (i) any nomination made under rule 14 of the said rules; (j) any statement in Form 32 or 32A

furnished under rule 45 of the said rules.

(4) For securing compliance of any notice given under this section the Commissioner shall have all the powers mentioned in sub-sections (2), (3) and (4) of the last preceding section.

(5) Where any person is prosecuted for failure to comply with any requirement made of him under this section, the burden of proving that he had reasonable excuse for such failure, shall be on him.)

1. Section 49A was inserted by Mah. 44 of 1964, s.3.

## **50. Dealer to declare the name of manager of business :-**

: - Every dealer, who is liable to pay tax, and who is a Hindu undivided family, or an association or club or society or firm or company, or who carries on business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed send to the authority prescribed, a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be the manager or managers of such dealer's business for the purposes of this Act. Such declaration may be revised from time to time.

## **51. Power to collect statistics :-**

: -

(1) If the State Government considers that for the purposes of the better administration of this Act, it is necessary so to do, it may, by notification in the Official Gazette, direct that statistics be collected relating to any matter dealt with by or under this Act.

(2) Upon such direction being made, the State Government or any person or persons authorised by it in this behalf may, by notification in the Official Gazette, and by notice in any Newspaper or in such other manner as in its or his opinion is best calculated to bring the notice to the attention of dealers, call upon all dealers or any class of dealers to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

## **CHAPTER 7** Proceedings

### **52. Determination of disputed questions :-**

:-

(1) 1[If any question arises, otherwise than in proceedings before a Court, or before the Commissioner has commenced assessment of a dealer under section 33 or 35, whether, for the purposes of this Act-]

(a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or

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

2[(c) any transaction is a sale or purchase, or where it is a sale or purchase the sale price or the purchase price, as the case may be, therefor, or]

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

(e) 3[in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer] in respect of any particular sale or purchase, or if tax is payable the rate therefore, the Commissioner 4[shall, subject to rules, make an order] determining such question. 5[Explanation - For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment or re- assessment of a dealer under section 33 or 35, when the dealer is served with any notice by the Commissioner under section 33 or 35, as the case may be.]

(2) The Commissioner may direct that the 6[determination or, as the case may be, review] shall not affect the liability of any person under this Act, as respects any sale or purchase effected prior to the [determination or, as the case may be, review).

7 [(2A) The Commissioner for the reasons to be recorded in writing may, on his own motion review the order passed by him under sub-section (1) or (2), and pass such order thereon as he thinks just and proper. The order of review shall not affect the liability of any person under this Act, in respect of any sale or purchase effected prior to the review:

Provided that, no order shall be passed under this sub-section unless the dealer or the person in whose case the order is proposed to be reviewed, has been given a reasonable opportunity of being heard:

Provided further that, before initiating an action under sub-section (2A) the Commissioner shall obtain prior permission of the



Government.)

(3) If any such question arises from any order already passed under this Act or any earlier law, no such question shall be entertained for determination under this section; but such question may be raised in appeal against, or by way or revision of such order.

1. This portion was substituted by Mah. 29 of 1965, s.21(a).

2. Clause (c) was substituted by Mah. 29 of 1965, s.21(b).

3. Substituted for the words "any tax is payable" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

4. Substituted for the words "shall make an order" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

5. This explanation was added by Mah. 29 of 1965, s.21(c).

6. Substituted for the word "determination" by Mah. Act 17 of 1999 w.c.f. 6.2.1999.

7. Sub-section (2A) inserted by Mah. Act 17 of 1999 w.c.f. 6.2.1999.

### **53. Powers of Tribunal and Commissioner :-**

:-

(1) In discharging their functions by or under this Act. the Tribunal and the Commissioner shall have all the powers of a Civil Court for (he purpose of-

(a) proof of facts by affidavit;

(b) summoning and enforcing the 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 purposes of this Act, any officer appointed by the Tribunal or the Commissioner may administer the oath to the deponent.

1[(3) Without prejudice to provisions of any other law for the time being in force, where a person, to whom a summons is issued by the Tribunal or the Commissioner either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and lime, intentionally omits to attend or produce the documents at the place and time, the Tribunal or the Commissioner, as the case may be. may impose on him such fine not exceeding five 2 [thousand]

(4) If any documents are produced by a person on whom a summons was issued by the Commissioner, and the Commissioner

has reason 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, the Commissioner may, for the 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, or for a prosecution.]

1. Sub-section (3) and (4) were added by Mah. 62 of 1974. s.9.

2. Substituted for the word "hundred" by Mah. 29 of 1994 w.e.f. 1.5.1994.

#### **54. Bar to certain proceedings :-**

:- Save as provided by section 61, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or [any officer or person subordinate to him] shall be called in question in any Court, and save as is provided by section 55, no appeal] shall lie against any such assessment or order.

1. These words were substituted for the words "section 55 and 57 no appeal or application for revision" by Mah. 24 of 1990. s. 10.

#### **55. Appeals :-**

.

(1) An appeal, from every original order, not being an order mentioned in section 56 passed under this Act or the rules made thereunder, shall lie-

(a) if the order is made by a Sales Tax Officer, or any other officer subordinate thereto, to the Assistant Commissioner;

(b) if the order is made by [a Senior Assistant Commissioner or] an Assistant Commissioner, [to the Deputy Commissioner;]

(c) if the order is made by a Deputy Commissioner, Additional Commissioner, or Commissioner, to the Tribunal.

(2) In case of an order passed in appeal by an Assistant Commissioner [or by Deputy Commissioner] a second appeal shall lie, at the option of the appellant either to the Commissioner or to the Tribunal.

(3) Every order passed in appeal under this section, shall subject to the provisions of sections 57, 61 and 62 be final.

(4) Subject to the provisions of section 60, no appeal shall be entertained unless it is filed within Sixty days from the date of the

communication of the order appealed against.

3[(5) The Appellate Authority or the Tribunal, as the case may be, may, while admitting the Appeal, pending the disposal of the Appeal, stay the order appealed against, subject to such conditions or restrictions as may be deemed necessary including a direction for depositing of a part or whole of the disputed amount by the Appellant.

(6) All Second Appeals and Applications filed before the coming into force of section 14 of the Maharashtra Tax Laws (Levy and Amendment) Act, 2001, in so far as the said Appeals are filed against any order passed in First Appeal directing payment to be made of any sum with or without security for admission of the First Appeal, shall abate:

Provided that, such abating of the Second Appeal shall not affect the stay order, if any, granted by the Appellate Authority or the Tribunal against the original order, against which the First Appeal has been filed and is pending.]

4 [(7) Subject to such rules of procedures as may be prescribed, every Appellate Authority (both in first appeal and the second appeal) shall have the following powers:-

(a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment; or it may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and after making such further inquiry as may be necessary; and the assessing authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(b) in an appeal against an order imposing a penalty or interest the appellate authority

Provided that, the appellate authority shall not enhance an assessment or a penalty or interest, or reduce the amount of draw-back, set-off or refund of the tax, unless the appellant has had a reasonable opportunity of showing cause against such enhancement of reduction.]

1. These words were substituted for the words "to the Commissioner" by Mah. 26 of 1983.

2. These words were inserted by Mah. 26 of 1983, s.2(b).

3. Sub-section (5) and (6) substituted for sub-section (5) by Mah. Tax Laws (Levy and Amendment) Act. 2001.

4. Sub-section (6) renumbered as (7) by Mah. Tax Laws (Levy and Amendment) Act, 2001.

## **56. Non-appealable orders :-**

:- No appeal and no application for revision shall lie against,-

(1) A notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act, or 1[notice issued under any of the provisions of section 38B of this Act, or] 2[notice or any order issued under any of the provisions of section 39-IA, or]

3[(1A) 4[orders]] issued by the Commissioner under the third proviso to sub-section (4A) of section 33, or]

5[(1B) any order or direction issued under the first proviso to sub-section (4) of section 38 on an application for installments.]

6[(1C)\* •]

(2) An order pertaining to the seizure or retention of account books, registers and other documents, or

7[(2A) Any order issued under sub-section (1) of section 53, or]

(3) An order sanctioning a prosecution under this Act, or

(4) An order 8 [\* \* \*] under section 70.

1. Inserted by Mah. 32 of 1981, s.38.

2. Substituted for the words, figure and letters "notice issued under the provisions of section 39IA. or" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

3. For the brackets, letter and word "(a) directions" the brackets, letter and word "(1A) directions" substituted by Mah. 9 of 1989, s.20(b).

4. For the word "direction" the word "orders" substituted by Mah. 24 of 1990, s. 1 I(a).

5. Clause IB inserted by Mah. Act 17 of 1999 w.e.f. 6.2.1999.

6. Clauses 113, 1C and 2A remained in force from 1.5.1992 to 8.9.1992 and were deemed to be deleted w.e.f. 1.5.1992 by Mah. XVIII of 1994.

7. Clause (2A) inserted by Mah. Tax Laws (Levy and Amendment) Act. 1995.

8. In clause 14) the words "transferring any proceedings" deleted by Mah. 24 of 1990. s. 11(b).

## **57. Revision :-**

(1) Subject to the provisions of section 56 and to any rules which may be made in this behalf, - 1[(a) the Commissioner may, of his own motion, call for and examine the record of any order passed

(including an order passed in appeal) under this Act or the rules made thereunder by any officer or person subordinate to him and pass such order thereon as he thinks just and proper:

Provided that, no notice in the prescribed form shall be served by the Commissioner under this clause after the expiry of three years from the date of commencement of the order sought to be revised and no order in revision, shall be made by him hereunder after the expiry of five years from such date:)

2[Provided further that, the period of limitation of five years shall not apply in a case where the point or points involved in the revision proceedings is the subject matter of any proceedings pending before the Tribunal, High Court or Supreme Court and in such a case it shall be competent for the Commissioner to decide the revision proceedings within eighteen months from the date of notice of hearing served on the assessee after the conclusion of the proceedings in the Tribunal, High Court or, as the case may be, Supreme Court.] (b) T \* \*]

3 [(1A) Notwithstanding anything contained in this section or any other provisions of this Act, where the State Government or the Commissioner has initiated any proceeding before an appropriate forum, against a point which is against the State by the judgement of the Tribunal, then the Commissioner may pass an order in revision or may issue a notice as provided in this section and pass an order in revision, as he thinks fit, as if the point was not so decided against the State, but shall stay the recovery of the dues including interest and penalty, if any, in so far as they relate to such point until the decision by the appropriate forum.]

1. This clause was substituted by Mah. 21 of 1970, s.4.

2. Proviso added by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

3 . Sub-section (1A) substituted by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.

## **58. Court-fee on appeal revision and certain other applications :-**

: - Notwithstanding anything contained in the Bombay Court-fees Act, 1959 , an appeal preferred under section 55 1[\* \*] shall bear a court-fees stamp of such value 2[not exceeding 3[one thousand rupees]] as may be prescribed, 4[and any other application, not otherwise provided for 5[by 6[\* \*] this Act] when presented to a

Prescribed Authority for a prescribed purpose] 7[or when presented to a Tribunal] [shall bear a court-fees stamp of such value not exceeding 8 [one hundred rupees) as may be prescribed.]

1. The words and figures "where an appeal lies under section 55 and no appeal has been filed" deleted by Mah. 24 of 1990. s. 13(a).

2. These words were inserted by Mah. 29 of 1965, s.23.

3. For the words "one hundred rupees" the words "one thousand rupees" substituted by Mah. 9 of 1989, s.21.

4. Added by Mah. 42 of 1971, s.9(a).

5. Substituted for the words "in the Act" by Mah. 42 of 1985, s.7(a).

6. The words "or under" deleted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

7. These words were added by Mah. 42 of 1985. s.7(b).

8. Substituted for the words "twenty five rupees" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 1997.

### **59. Application of sections 4 and 12 of Limitation Act :-**

:- In computing the period laid down under sections 55, 57 and 61 the provisions of Section 4 and Section 12 of 1 [the Limitation Act, 1963], shall, so far as may be apply.

1. Substituted by Mah. Act 25 of 1965.

### **60. Extension of period of limitation in certain cases :-**

:- An appellate authority may admit any appeal under Section 55 after the period laid down in the said section, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

Explanation - For the purposes of this section, when an appeal is preferred under section 55 after the period laid down in the that section, the ground that the appellant came to know of any judgement, decision or order of any Court, Tribunal or other authority after the expiry of the period of limitation aforesaid (whether such judgement, decision or order was delivered or made before or after the expiry of that period), shall not be deemed to constitute a sufficient cause.)

### **61. Statement of case to High Court :-**

:-

1[(1) Within ninety days from the date of the communication of the order of the Tribunal, passed in appeal being an order which affects the liability of an person to pay tax or penalty or interest or to forfeiture of any sum or which affects the recovery from any person of any amount under section 39, that person, 2[the Additional Commissioner of Sales Tax having jurisdiction over the whole State or the Commissioner,) may by application in writing (accompanied where the application is made by that person, by a fee of one 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, the Tribunal shall, as soon as may be after the receipt of such application, draw up a statement of the case and refer it to the High Court: Provided that, if in the exercise of its power under this sub-section 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, 3[the Additional Commissioner of Sales Tax having jurisdiction over the whole State or the Commissioner] may within ninety days from the date 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.)

4[Provided further that, the Tribunal may refuse to refer the case to the High Court if the person, or as the case may be, the Commissioner fails to submit the paper book and other documents required by the Tribunal, within a period of three months from the date of the order of the Tribunal served on that person or, as the case may be, the Commissioner]

(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 it to the High Court.

(3) If the High Court is not satisfied that the statements in the case referred under this section is sufficient to enable it to determine the question raised thereby, it may refer the case back to (he 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.

5 [Explanation - For the purposes 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) Where a reference is made to the High Court under this section, the costs including the disposal of the fee referred to in sub-section (1), shall be in the discretion of the Court.

(6) The payment of the amount of the [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 43.

1. Sub-section (1) as it existed on 30.4.1992 restored w.c.f. 1.4.1994 by Mah. XV11I of 1994.

2. Substituted and deemed to be substituted w.c.f. 1.6.1994 for the words "or the Commissioner" by Mah. Act 16 of 1995.

3. Substituted and deemed to be substituted w.e.f. 1.6.1994 for the words "or, as the case may be the Commissioner" by Mah. Act 16 of 1995.

4. Inserted w.e.f. 4.9.1996 by Mah. IX of 1996.

5. Substituted for the words "tax" by Man. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.-.

## **62. Rectification of mistakes :-**

(1) The Commissioner may at any time within two years from the date of any order passed by him, on his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any Such mistake which has been brought to his notice by any person affected by such order: Provided that, no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of a refund, unless the Commissioner has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

(2) The provisions of sub-section (1) shall apply to the rectification of a mistake by the Tribunal or an appellate authority under section 55 as they apply to the rectification of a mistake by the Commissioner.



(3) Where any such rectification has the effect of reducing the amount of tax or penalty 1[or interest) or the amount of forfeiture, the Commissioner shall, in the prescribed manner, refund any amount due to such person.

(4) Where any such rectification has the effect of enhancing the amount of tax or penalty 1 [or interest] or the. amount of forfeiture or reducing the amount of the refund, the Commissioner shall recover the amount due from such persons in the manner provided for in section 38.

1. Inserted by Man. 11 of 1987. s.21(a).

**62A.** Transfer To Defraud Revenue Void :-

1 [ (1) Where during the pendency of any proceeding under this Act, any dealer liable to pay tax or any other sum payable under this Act, the total amount of which exceeds Rs. 25,000 creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of, any of the assets of his business valued at Rs. 10,000 or more in favour of any other person with intention of defrauding the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of such proceeding:

Provided that, such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.

(2) Where any person is liable to pay tax or any other sum payable under this Act, has. during the pendency of any proceeding under this Act, or after completion thereof, created a charge on, or parted with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of, any of his assets in favour of any other person and the Commissioner has reason to believe that such charge or transfer becomes void under sub-section (1), then the Commissioner shall issue a notice and hold enquiry and decide whether the charge or transfer has become void under sub-section (1) of this section..

(3) If after holding such enquiry the Commissioner comes to a conclusion that the charge or transfer is void, he shall make an order declaring such charge or transfer to be void. Explanation - In this section "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to Which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.]

1. Section 62A was substituted by Man. 32 of 1981, s.39.

## **CHAPTER 8** Offences and Penalties

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

1(1) Whoever not being a Registered dealer under section 22, falsely represents that he is or was a Registered dealer at the time when he sells or buys goods shall on conviction be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine.

(2) Whoever knowingly furnishes a false return shall on conviction be punished-

(i) in case where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds Rs. 10,000, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(3) Whoever knowingly produces before the Commissioner, a false bill, cash memorandum, voucher, declaration, certificate or other document for any purpose referred to in sub-section (2A) of section 36, shall on conviction be punished-

(i) in case where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds Rs. 50,000, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(4) Whoever knowingly keeps false account of the value of the goods bought or sold by him in contravention of sub-section (1) of section 48, shall on conviction be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(5) Whoever knowingly produces false accounts, registers or documents or knowingly furnishes false information, shall on conviction be punished-

(i) in case where the amount of tax, which could have been evaded if the accounts, registers or documents or information referred to

above had false return had been accepted as true, exceeds Rs. 50,000 during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to one year and with fine.

(6) Whoever, not holding Licence or Authorization 2[\* \*] or Permit, falsely represents at the time he purchases or sells any goods that he holds, as the case may be, the Licence or Authorization 2[\*] or Permit, shall on conviction be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine.

(7) Whoever issues to any person certificate or declaration under section 8A, 11, 12 or 12A or a false bill, cash memorandum, voucher, declaration, certificate or other document which he knows or has reason to believe to be false, shall on conviction be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with line.

(8) Whoever-

(i) wilfully attempts, in any manner whatsoever, to evade any tax leviable under this Act, or

(ii) wilfully attempts, in any manner whatsoever, to evade any payment of any 4[tax or penalty or interest or all of them] under this Act. 5[or]

6[(iii) fails to comply with the requirements of any notice issued under section 39-1A.] shall on conviction be punished-

(a) in case where the amount involved exceeds Rs. 50,000 during the period of a year, with rigorous imprisonment for a term which shall not be less than six months but which may extend to three years and with fine;

(b) in any other case, with rigorous imprisonment for a term which shall not be less than

(9) Whoever aids or abets any person in commission of any act specified in sub-sections (1) to

(10)Whoever- 7[\*] (b) carries on business as a dealerwithout being registered in wilful contravention of section 22, or 8[(b-1) fails without sufficient cause to make an application for cancellation of his registration as required under clause (a) of sub-section f6) of section 22, or] (c) fails without sufficient cause to furnish any information required by section 30, or 9[(d) \* \* 1 6[(d-1) fails without sufficient cause to surrender the Certificate of Entitlement

together with the unused Form BC as required under section 4A, or) (e) without reasonable cause, contravenes any of the provisions of section 46; (f) without sufficient cause fails to issue a bill or cash memorandum as required under section 47; (g) fails without sufficient cause, when directed so to do under section 48 to keep any accounts or record, in accordance with the directions, or (h) fails without sufficient cause to comply with any requirements made of him under section 49, or (i) voluntarily obstructs any officers making inspection or search or seizure under section 49, shall on conviction be punished with imprisonment for a term which may extend to one year and with fine.

(10A) Whoever fails without sufficient cause, to furnish any return as required by section 32 by the date and in the manner prescribed, shall on conviction be punished with simple imprisonment for a term which may extend to one year and with fine which shall not be less than-

(i) rupees two thousand, if the tax due for the period covered by the return does not exceed rupees twenty thousand;

(ii) rupees five thousand, if the tax due for the period covered by the return does not exceed rupees one lakh;

(iii) rupees ten thousand, if the tax due for the period covered by the return does not exceed rupees one lakh

(11) Whoever commits any of the acts specified in sub-sections (1) to (10) and the offence is continuing one under any of the provisions of these sub-sections, shall on conviction be punished daily fine not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

(12) Notwithstanding anything contained in sub-sections (1) to (11), no person shall be proceeded against these sub-sections for acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than Rs. 200 during the period of a year.

(13) Where a dealer is accused of an offence specified in sub-section (1), (2), (3), (4), (5), (6) or (7) or in clause 11[ 12[ \* \*] (c), (d), 13 [(d-l)], (e), (g) or (h) of sub-section (10), or sub-section 10A the person deemed to be the manager of the business of such dealer under section 50 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

(14) No prosecution for an offence against this Act shall be

instituted in respect of same facts on which a penalty has been imposed by the Commissioner under any provisions of this Act.]

1. Section 63 was substituted by Mah. 32 of 1981, s.40.
2. Deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.
4. Substituted for the words "tax or penalty or both" by Mah. 11 of 1987. s.22.
5. The word "or" inserted by Mah. 9 of 1989, s.22(a).
6. Clause (iii) inserted by Mah. 9 of 1989. s.22(6).
7. Sub-clauses (a-1) and (a) deleted by Mah. Tax Laws (Levy and Amendment) Act, 1995.
8. Clause (b-1) inserted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.
9. Clause (d) deleted by Mah. IX of 1996.
11. Inserted by Mah. 28 of 1986. s.7(b).
12. Brackets, figures and letters "(a-i), (a)" deleted by Mah. Tax Laws (Levy and Amendment) Act. 1995.
13. Inserted by Mah. 15 of 1985, s.6(b).

**63A.** Action Against Any Authority For Vexatious Order Or Willful Underassessment, Etc :-

The Commissioner may,-

- (i) on receipt of any complaint from any dealer or person liable to pay tax under this Act that any authority has made on the proceedings of such dealer or person a false or vexatious order or has taken any action under this Act vindictively; or
- (ii) on receipt of any report from any authority appointed under section 20 or from the Tribunal that a particular authority has knowingly or willfully under-assessed any dealer or person or has passed a false or vexatious order or has taken any action under this Act vindictively, or
- (iii) on his own motion, if he has reason to believe that any authority has passed such order or taken such action or has made such under-assessment, within three months, initiate appropriate enquiry or action in the matter, and if in his opinion prima facie case against such authority exists, he may proceed against such authority under the Bombay Civil Services Conduct, Discipline and Appeal Rules or any other relevant rules for the time being in force.]

1. Section 63A inserted by Mah. 32 of 1981.

**64.** Disclosure of information by a public servant :-

( 1 ) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or any record of evidence given in the course of any proceedings under this Act (other than proceeding before a Criminal Court), [or in any record of any assessment proceeding relating to the recovery of a demand, prepared for the purposes of this Act,] shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872 , no court shall save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or give evidence before it in respect thereof.

(2) If, save as provided in sub-section (3), any servant of the Government discloses any of the particulars referred in sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both. (3) Nothing contained in this section shall apply to the disclosure-

(a) of any such particulars in respect of any such statement, return, account, document, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1947 , or this Act, 1[or any other law for the time being in force]; or

(b) of any such particulars to the State Government or to any person acting in the execution of this Act, for the purposes of carrying out the object of this Act; or

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

(d) of any such particulars to Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or

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

(f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Sales Tax Department to any person or persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or

(g) of such facts to an officer of the Central Government or a State

Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or  
(h) of any such particulars when such disclosure is occasional by the lawful exercise of a public servant of his powers under the Bombay Stamp Act, 1958 or the Indian Stamp Act, 1899 . to impound an insufficiently stamped document; or

(i) of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with sales tax proceedings against a legal practitioner, sales tax practitioner or Chartered Accountant, to the authority empowered to take disciplinary action against members practicing the profession of a legal practitioner, sales tax practitioner or Chartered Accountant, as the case may be; or

(j) of any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons authorised under sub-section (2) of section 51 as may be necessary for enabling the Director or such person to 2[commodity: or]

3 [(k) of any such particulars of any officer of the Central Government or the State Government as may be necessary for the administration of any law in force in any part or whole of India.]

1. Inserted by Mali. 62 oi" 1974. s. 10.

2. Substituted for the word "commodity" by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

3. Inserted by Mali. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

## **65. Disclosure of information required under section 51 and failure to furnish information or return under Hint section :-**

(1) No information of any individual return and no pan of any individual return, with respect to any matter given for the purposes of section 51 shall without previous consent in writing of the owner for the time being or his authorised agent be published in such manner as to enable any particulars to be identified as referring to a particular dealer and no such information shall be used for the purposes of prosecution under the provisions of this Act.

(2) Except for the purposes of prosecution under this Act. or under the Indian Penal Code, no person who is not engaged in the collection of statistics under section 51 or in the administration of this Act shall be permitted to see or have access to any information or any individual return referred to in that section.

(3) If any person required to furnish any information or return under section 51-

(a) willfully refuses or without lawful excuse neglects to furnish such information or return as may by that section be required, or

(b) willfully furnishes or cause to be furnished any information or return which he knows to be false, he shall on conviction be punished with fine which may extend to one hundred rupees and in case of a continuing offence to a further fine which may extend to ten rupees for each day after the first during which the offence continues.

(4) If any person engaged in connection with the collection of statistics under section 51 willfully discloses any information or the contents of any return given or made under that section, otherwise than in execution of his duties under the Indian Penal Code, he shall on conviction be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

**65A.** Publication And Disclosure Of Information Respecting Dealers And Other Persons In Public Interest :-

(1) Notwithstanding any thing contained in sections 64 and 65, if the State Government is of opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any other particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit. .

(2) No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed <sup>1</sup> [or interest levied] or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the Appropriate Authority has expired without any appeal having presented or the appeal, if presented has been disposed of.

Explanation - In the case of a firm, company or other association of persons, the names of the partners of the firm, the directors, managing agents, secretaries, treasurers may also be published or disclosed, if, in the opinion of the State Government the circumstances of the case justify it.]

1. Inserted by Mah. 11 of 1987. s.23.

**66.** Offences by companies :-



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

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

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

Explanation - For the purposes of this section-

(a) "Company" means a body corporate and includes a firm or oilier association of individuals: and

(b) "director" in relation to a firm means a partner in the firm.

## **67. Cognizance of offences :-**

.

(1) No Court shall take cognizance of any offence punishable under Section 63 Section 64 Section 65 or under any rules made under this Act, except on a complaint by the Commissioner or any other authority empowered by him in this behalf by notification in the Official Gazette].

(2) Notwithstanding anything contained in the 1 Code of Criminal Procedure, 1973 ], all offences punishable under this Act or rules made thereunder shall be cognizable and bailable.

2[(3) Notwithstanding anything contained in the 1 Code of Criminal Procedure, 1973 it shall be lawful for 4[Metropolitan Magistrate] or Magistrate of the First Class to pass on any person convicted of an offence under Section 63 or Section 64 a sentence or fine as provided in the relevant section, in excess of his powers under 5 Section 29 ] of the said Code.]

1. Substituted for the words and figures "Code of Criminal

Procedure. 1898" by Mali. Act 16 of 1982. .s.Sla).

2. This sub-section was; added by Mah. 40 of 1969. s. 10.

4. Substituted for the words "Presidency Magistrate" by Mali. 16 of 1982. s.5(b)(ii).

5. Substituted for the words and figures "section 32" by Mali. 16 of 1982. s.5(b)(iii).

## **68. Investigation of offences :-**

.

(1) Subject to such conditions as may be prescribed, (he Commissioner may authorise either generally or in respect of a particular case or class of cases of 1 [any officer or person subordinate to him] to investigate all or any of (he offences punishable under this Act.

(2) Every officer so authorised shall, in the conduct of such investigation, exercise (he powers conferred by the Code of Criminal Procedure, 1973], upon an officer in charge of a police station for the investigation of the cognizable offence.

1. Substituted for the words and figures "any officer appointed under section 20 to as.sist him" by Mali. 2 I of 1970. s.5.

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

.

(1) The Commissioner may either before or after the institution of the proceedings for any offence punishable under section 63 or under any rules made under this Act accept from any person charged with such offence by way of composition of the offence a sum not exceeding two thousand rupees or where the offence charged under 1[sub-section (1). (2) (3], (4), (5), (6), (7). (8) or (9) or clause (b), (d), 2[(d-1)1. (e). (h) or (i) of sub-section (10), 3 [or sub-section 10A] of section 63] not exceeding double the amount ol tax which would have been payable in the sale, purchase or turnover to which the said offence relates, whichever is greater.

(2) On payment of such sum as may be determined by the Commissioner under sub-section (1) no further proceedings shall be taken against the accused person in respect of the same offence.

1. Substituted for "clause (a), (b) (c), (d). (c), (f), (g). (h). (i), (j) or (k) of sub-seclion (1) of section 63" by Mali. 32 of 1981. s.42.

2. The brackets, letter and figure (d-1), were inserted by Mah. 15 of 1985. s.7.

3. Inserted by Man. IX of 1996.

## **CHAPTER 9** Miscellaneous

### **70. Power to transfer proceedings :-**

1 [(1)1 The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceedings or class of proceedings under the provisions of this Act, from himself to any other officer and he may likewise transfer any such proceedings (Including a proceeding pending with any officer or already transferred under this section) from any officer to any other officer or to himself: Provided that, nothing in this section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both officers are situated in the [Greater Bombay or, as the case may be, in the same district as constituted under section 4 of the Maharashtra Land Revenue Code, 1966.]

[(2) Notwithstanding anything contained in sub-section (1), where the exigency of the administration so requires, the Commissioner may assign by transfer, cases from one officer to other if the offices of such officers are situated in the same city, locality or place and all such officers have identical territorial jurisdiction.] Explanation - In this section-the word "proceedings" in relation to any dealer [\* \* means all proceedings under this Act in respect of any year, which may be pending on the date of such order, or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such dealer.]

1. Sub-sections (1) and (2) substituted by Mah. 11 of 1992 in force from 1.5.1992 to 8.9.1992 and again from 1.4.1994.

### **71. Appearance before any authority in proceedings :-**

.

(1) Any person, who is entitled or required to attend before any authority in connection with any proceeding under this Act, may attend-

- (a) by [\* \*] a relative or a person regularly employed by him, or
- (b) legal practitioner [or Chartered Accountant or Cost Accountant,] who is not disqualified by or under sub-section (2), or
- (c) by a sales tax practitioner who possess the prescribed qualifications and is entered in the list, which the Commissioner

shall maintain in that behalf, and who is not disqualified by or under sub-section (2), [if such relative, person employed, legal practitioner, [Chartered Accountant or Cost Accountant or,] sales tax practitioner is authorised by such person in the prescribed form, and such authorisation may include the authority to act on behalf of such person in such proceedings.]

(2) The Commissioner may by order in writing and for the reasons to be recorded therein disqualify for such period as is stated in the order from attending before any such authority, any legal practitioner, [Chartered Accountant or Cost Accountant or,] Sales Tax Practitioner, -

(i) who has been removed or dismissed from Government service, or

(ii) who being a legal practitioner, [(Chartered Accountant or Cost Accountant)] is found guilty of misconduct in connection with any proceedings against the member of the profession to which he belongs, or

(iii) who being a sales tax practitioner is found guilty of misconduct by the Commissioner.

(3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard.

(4) Any person against whom any order of disqualification is made under this section may within one month of the date of communication of such order appeal to the Tribunal to have the order cancelled.

(5) The order of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred until the appeal is decided.

(6) The Commissioner may, at any time suo motu or in an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified.

## **72. Persons appointed under section 20 and members of Tribunal to be public servants :-**

. The Commissioner and all officers and persons appointed under section 20 1 [\*\*] and all members of the Tribunal shall be deemed to be public servants within the meaning of section. 2.1 of the Indian Penal Code.

1. The words "to assist the Commissioner" were deleted by Mah. 21

of 1970, s.6.

### **73. 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.

### **74. Power to make rules :-**

( 1) The power to make rules under this Act shall be exercisable

(2) Without prejudice to any power to make rules contained elsewhere in this Act, State Government may make rules for levy of fees, for any of the purposes of this Act; and such rules may include rules for levy of fees, for any of the purposes of this Act.)

1[(2A) Any rule made under this Act may be made to as to be retrospective to any date not earlier than 1st January 1960.]

(3) In making any rules the State Government may direct that a breach thereof shall be punishable with fine not exceeding two thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.

(4) Rules made under this section shall be subject to the condition of previous publication: Provided that, if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section.

2 [(5) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making modification in the rule or Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be, however that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.]

1. Sub-section (2) inserted by Mah. Ordinance IV of 1997.

2. Sub-section (5) substituted by Mah. 29 of 1965. s.28(d).

## **75. Certain sales and purchases not to be liable to tax :-**

. Nothing in this Act or the rules made thereunder shall be deemed to impose or authorise the imposition of a tax on any sale or purchase of any goods, where such sale or purchase takes place-

(a) (i) outside the State: or (ii) in the course of the import of the goods into the territory of India or the export of goods out of such territory; or

(b) in the course of inter-State trade or commerce; and the provisions of this Act and the said rules shall be read and construed accordingly. Explanation - For the purposes of this section whether a sale or purchase takes place,- {i} outside the State; or (ii) in the course of the import of the goods into the territory of India or the export of goods out of such territory; or (iii) in the course of inter-State trade or commerce, shall be determined in accordance with the principles specified in sections 3, 4 and 5 of the Central Sales Tax Act, 1956.

## **76. Repeals :-**

. The following laws, that is to say-

(a) the Bombay Sales Tax Act. 1953,

(b) the Bombay Sales of Intoxicants Taxations Act, 1953,

(d) the Hyderabad General Sales Tax Act, 1950,

(e) the Saurashtra Sales Tax Ordinance, 1950,

(f) the Central Provinces and Berar Sales Tax Act, 1947,

(g) the Central Provinces and Berar Sales Tax Act, 1947, as extended to the Kutch area of the State of Bombay, and

(h) the Central Provinces and Berar Sales of Lubricants Taxation Act, 1938 are hereby repealed.

## **77. Savings :-**

.

(1) Notwithstanding the repeal by section 76 of any of the laws referred to therein,

(a) those laws (including any earlier law continued In force under any provisions thereof), and all rules, regulations, orders, notifications, forms and notices issued under those laws and in force Immediately before the appointed day shall be subject to the provisions 1 [of section 42], continue to have effect for the purpose

of the levy, assessment, reassessment, collection, refund or set-off of any tax, or granting of a draw-back in respect thereof, or the imposition of any penalty which levy, assessment, reassessment, collection, refund, set-off, draw-back or penalty relates to any period before the appointed day, or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid;

(b) any registration certificate issued by or under any of the laws, repealed, being a registration certificate in force immediately before the appointed day,- (1) shall, in so far as the liability of tax under sub-section (1) of section 3 exists, be deemed on the appointed day to be certificate of registration issued under this Act, and . (ii) where an application is made before the appointed day for a Licence, Authorization certificate or registration and such Licence, Authorization or Registration could have been granted by or under the provisions of this Act if it had been in force, the registration certificate shall be deemed on the appointed day also to be a Licence, Authorization or Registration, as the case may be, issued under this Act, and accordingly such registration certificate shall be valid and effectual as a Certificate of Registration and also as the case may be, a Licence, Authorization or Recognition, under this Act, but for a period only of one month from the commencement thereof, or under a Certificate of Registration, Licence, Authorization or Recognition, is duly issued or granted under this Act, whichever is earlier.

(c) any person entitled to appear before any authority under any of the laws repealed shall be deemed to be entitled to appear before any authority under this Act, and accordingly if such person be a sales tax practitioner he shall be entitled to have his name entered in the list maintained under section 71.

(2) The recognition of any dealer for any purpose under the provisions of any law so repealed, which recognition is in force immediately before the appointed day shall in so far as it is not inconsistent with any certification necessary, or required by or under the provisions of this Act be deemed to be such certification under this Act and shall continue in force for a period of six months from the appointed day or until a fresh certificate is issued under this Act, whichever is earlier.

(3) Without prejudice to the provision contained in the foregoing sub-sections and subject thereto, Section 7 of the Bombay General Clauses Act, 1904 , shall apply in relation to the repeal of any of the laws referred to in section 76 as, if the law so repealed had

been an enactment within the meaning of section 7 of that Act.

1. Deemed always to be substituted for the words and figures "of sections 35 and 42" by Mah. 21 of 1962. S.21(2).

**78. Construction of references in any repealed law to offices, authorities, etc :-**

. Any reference in any provision of any law now repealed by this Act, or an officer, authority or Tribunal shall for the purpose of carrying into effect the provisions contained in section 77 be construed as reference to the corresponding Officer, authority or Tribunal appointed or constituted by or under this Act; and if any question arises as to who such corresponding Officer, authority or Tribunal is, the decision of the State Government thereon shall be final.

**79. Removal of difficulties :-**

If any difficulty arises in giving effect to the provisions of Section 77 of this Act, the State Government may by order published in the Official Gazette make such provision or give such direction as appears to it to be necessary for removing the difficulty.