

Orissa Sales Tax Act, 1947

14 of 1947

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Orissa Sales Tax Act, 1947

14 of 1947

Whereas it is necessary to make an addition to the revenues of Orissa and for that purpose to impose a tax on the 2(sale or purchase of goods) in Orissa. It is hereby enacted as follows:-

1. Short Title, Extent And Commencement :-

This Act may be called the Orissa Sales Tax Act, 1947.

It extends to the whole of the 3(State) of Orissa.

4(3) This Section shall come into force at once and the rest of this Act shall come into force on such date as the 5(State) Government may, by notification in the Gazette, appoint.

2. Definitions :-

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

6(a) xx xx xx xx

7(aa) xx xx xx xx

8(b) business includes -

any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

1(bb) Casual dealer means a person, who has whether as principal, agent or in any other capacity occasional transactions of a business nature involving purchasing, selling supplying or distributing goods in the State whether for commission, remuneration or otherwise.

2(c) Dealer means any person who carries on the business of purchasing, selling, supplying or distributing goods (including goods used or involved in the execution of works contract, whether as goods or in some other form), directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes :-

a local authority, a company, and undivided Hindu Family, any society,(including a Co-operative Society), club, firm or association which carries on such business; a society (including a co-operative Society), club, firm association or body of persons whether incorporated or not which purchases goods from or sells, supplies or distributes goods to members thereof for cash, deferred payment or other valuable consideration ;

a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of purchasing, selling, supplying or distributing goods on behalf of any principal whether disclosed or not; casual dealer; a person who transfers, otherwise than in pursuance of a contract, property in any goods for cash, deferred payment or other valuable consideration; a person who transfers property in goods (whether as goods or in some other form) involved in the execution of a works contract; a person who delivers goods on hire-purchase or any system of payment by installments; a person who transfers the right to use in goods for any purpose (whether or not for a specified period) for cash deferred payment or other valuable consideration; a person who supplies by way of or in any service or in any other manner, goods, being food or any other article of human consumption or any drink (whether or not intoxicant), whether such supply or service is for cash, deferred payment or other valuable consideration.

Explanation-I-Every person who acts as agent on behalf of a dealer residing outside the State and purchases, sells, supplies or distributes goods in the State or acts on behalf of such dealer as - a mercantile agent as defined in the India Sale of Goods Act, 1930, or

agent for handling goods or documents of title relating to goods, or an agent for the collection or payment of the sale price of goods or as a guarantor for such collection or payment.

and every local branch of a firm registered outside the State or of a company the principal office or headquarters whereof is outside the State, shall be deemed to be a dealer for the purpose of this Act.

Explanation-II: The Central Government or State Government or any of their employees acting in official capacity on behalf of such Government, who, whether or not in the course of business, purchases, sells, supplies or distributes goods, directly or otherwise for cash or for deferred payment or for commission, remuneration or for other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of this Act.

(d) Goods means all kinds or movable property other than actionable claims, stock, share or securities and includes goods used or involved in the execution of works contract whether as goods or in some other form, all growing crops, grass and things attached to or forming part of the land which are agreed before sale or under the contract of sale to be severed.

This definition was substituted by Section 2 of Act 1987 with effect from 7.4.1987. Prior to the amendment the position was as follows:-
Position from 1.8.1947 to 6.4.1987

(d) "Goods" means all kinds of movable property other than actionable claims, stock, shares or securities and also includes 1[xx xx]2(all growing crops, grass and things attached to or forming part of the land which are agreed before sale or under the contract of sale to be severed.)

3(dd) Gross turnover means the total of turnover of sales and turnover of purchases).

1(ddd) xx xx xx xx

2(dddd) "Importer" means a dealer who brings any goods into the State or to whom any goods are despatched from any place outside the State.

2(ddddd)"Manufacture", with all its grammatical variations and cognate expressions, means producing, extracting, altering, ornamenting, finishing or otherwise processing or adopting any goods, but shall not include such manufacture or manufacturing process as the State Government may, by notification, specify from time to time.

(e) "Prescribed" means prescribed by rules made under this Act.

3(ee) "Purchase price " means the amount payable by a person as valuable consideration for the purchase or supply of any goods less any sum allowed by the seller as cash discount according to ordinary trade practice, but it shall include any sum charged towards anything done by the seller in respect of the goods at the time of or before delivery of such goods other than the cost of freight or delivery or the cost of installation when such cost is

separately charged.

(f) "Registered Dealer" means a dealer registered under this Act.

4(ff) "Small Scale Industry" means an industry which is certified as such by the Director of Industries, Orissa, or the General Manager or Project Manager of the concerned District Industries Centre, Orissa or by any other authority as the State Government may, by notification, specify from time to time.

5(g) "Sale" means with all its grammatical variations and cognate expression, any transfer of property in goods for cash or deferred payment or other valuable consideration and includes -
transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration ;

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

Delivery of goods on hire-purchase or any system of payment by installments;

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

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

Supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration; but does not include a mortgage, hypothecation, charge or pledge and the words buy and purchase shall be constructed accordingly.

Explanation- (a) A sale or purchase of goods shall be deemed to take place inside the State if the goods are within the State -

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

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

appropriation ; Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this Explanation shall apply as if there were separate contract in respect of the goods at each of such places.

This definition assumed the present form with effect from 7.4.84. Prior to this the position was as follows:-

Position from 1.8.1947 to 6.4.1984

(g) "Sale" means with all its grammatical variations and cognate expression, any transfer of property in goods for cash or deferred payment or other valuable consideration¹[xx xx xx xx] but does not include a mortgage, hypothecation, charge or pledge ²[and the words buy and purchase shall be construed accordingly]. ³(xx xx xx xx) ⁴(xx xx xx xx)

⁵[Explanation-(a) Sale or purchase of goods shall be deemed to take place inside the State if the goods are within the State -

in the case of specific or ascertained goods at the time contract of sale is made; and in the case of unascertained or future goods at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this explanation shall apply as if there were separate contract in respect of the goods at each of such places]

⁶(h) "sale price" means amount payable to a dealer as ⁷(consideration) for the sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, ⁸(xx xx xx)

This definition assumed the present form with effect from 23.10.1959. Prior to it the position was as follows:-

Position from 1.8.1947 to 22.10.1959

(h) "sale-price" means amount payable to a dealer as valuable consideration for :-

(i) The sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any

sum charged for anything done by the dealer in respect of the goods at the time of or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged; or

(ii) [the carrying out of any contract, less the cost of materials supplied by the party giving the contract and the amount of the actual labour charges incurred and proved to the satisfaction of the assessing authority to have been so incurred in carrying out the contracts].

2(hh) "Scheduled Bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

3(hhh) "Tribunal" means the Orissa Sales Tax Tribunal constituted under Sub-section (2) of section 3 .

(i) 4["Turnover of Sales"] means the aggregate of the amount of sale prices and tax, if any received and receivable by a dealer in respect of sale or supply of goods 5[other than those declared under Section 3-B] 6(xx xx xx xx) effected or made during a given period.

Explanation - In computing the turnover, the amounts, if any, refunded by the dealer to a purchaser in respect of any goods purchased and returned by the purchaser within the prescribed period, shall be deducted,

This definition assumed the present form with effect from 21.12.1950 with Act 24 of 1950. Prior to this the position was as follows:-

Position from 1.8.1947 to 20.12.1950

"turnover" means the aggregate of the amounts of sale prices received and receivable by a dealer in respect of sale or supply of goods or carrying out of any contract, effected or made during a given period .

7[(j) "Turnover of purchases" means the aggregate of the amount of purchase prices paid and payable by a dealer in respect of the purchase or supply of goods or classes of goods declared under section 3-B.

Illustration - A dealer A in course of his business purchases goods declared under Section 3-B worth Rs.4,500 and other goods worth

Rs.4,800 during a particular period. He sells goods declared under Section 3-B for Rs.5,000 and other goods for Rs.5,100 during the same period. For that period, his turnover of purchase is Rs.4,500, turnover of sales is Rs.5,100 and gross turnover" is Rs.4,500 plus Rs.5,100 =Rs.9,600]

8[(jj) Works contract includes any agreement for carrying out, for cash or deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting-out, improvement, modification, repair or commissioning of any movable or immovable property.]

9(k) " Year " means the financial year, and

10(l) "Quarter" means a period of three months ending on the 31st March, 30th June, 30th September or 31st December.

3. Taxing Authorities :-

The State Government may appoint any person to be the Commissioner of Sales Tax, Orissa and he shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the Provisions of this Act.

The State Government shall constitute a Tribunal to be the Orissa Sales Tax Tribunal consisting of 1[six members] to exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act.

(2-a) 2[Three members] of the Tribunal shall be appointed from among the members of the Orissa Superior Judicial Service (Senior Branch) hereinafter called the Judicial Members of the Tribunal and the 3[other three members] shall be appointed from among the members of the Orissa Finance Service, Class-I(upgraded super time scale) (hereinafter called the Accounts member of the Tribunal).

(2-b) The Senior Judicial Member of the Tribunal shall be the chairman of the Tribunal who shall allot cases to the benches and exercise supervision in respect of their disposal.

(2-c) The chairman shall look to the overall administration of the

Tribunal subject to the regulations to be made by the Tribunal with the previous sanction of the State Government consistent with the provisions of this Act and the rules made there under.

(2-d) Any vacancy in the membership of the Tribunal shall be filled up by the State Government.

(2-e) (a) the functions of the Tribunal may be exercised -
by a Bench consisting of a single member as constituted by the Chairman when the total disputed amount of tax 4(including surcharge, if any) and penalty involved in a case does not exceed 5[rupees fifty thousand] ; by a Bench consisting of a Judicial member and Accounts member as may be constituted by the Chairmen, when the total disputed amount of tax 4(including surcharge, if any) and penalty involved in a case exceeds 5(rupees fifty thousand) but does not exceed 6(rupees five lakh); and by a Bench consisting of three members of the Tribunal when the total disputed amount of tax 4(including surcharge, if any) and penalty involved in a case exceeds 16(rupees five lakh ;]

(b) Where an appeal or application is heard by three members of the Tribunal and the members are divided in opinion on any point or points, such point or points, shall be decided in accordance with the opinion of the majority ;

(c) Where an appeal or application is heard by a bench consisting of two members, and the members are divided in opinion on any point or points, such point or points shall be referred to the Tribunal consisting of three members.

(3) The State Government may appoint such other persons under any prescribed designation including an Addl. Commissioner and a Deputy Commissioner to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of this Act within such local area as may be assigned to them by the Commissioner.

The Section assumed the present form with effect from 2.4.1993 with act 8 of 1993 . Prior to this the position was as follows:-

Position from 12.8.1983 to 1.4.1993.

3. Taxing authorities:-

(1) Same as was during the period from 2.12.1957 to 11.8.1983

1(2) The State Government shall constitute a Tribunal to be the Orissa Sales Tax Tribunal consisting of 2(four members) to exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act.

1(2-a) Two members of the Tribunal shall be appointed from among the members of the Orissa Superior Judicial Service (Senior Branch)(hereinafter called the Judicial Members of the Tribunal) and the 3(other two members) shall be appointed from among the members of the Orissa Finance Service, Class-I 4(upgraded super time scale)(hereinafter called the Accounts member of the Tribunal).

1(2-b) The Senior Judicial Member of the Tribunal shall be the Chairman of the Tribunal who shall allot cases to the benches and exercise supervision in respect of their disposal.

1(2-c) The Chairman shall look to the overall administration of the Tribunal subject to the regulations to be made by the Tribunal with the previous sanction of the State Government consistent with the provisions of this Act and the rules made there under.

1(2-d) Any vacancy in the membership of the Tribunal shall be filled up by the State Government.

1(2-e) (a) The functions of the Tribunal may be exercised -

(i) by a bench consisting of 5[three members] of the Tribunal when the total disputed amount of 6tax(including surcharge if any and penalty) involved in a case exceeds rupees fifty thousand ;

(ii) by a bench consisting of a Judicial member and Accounts member as may be constituted by the Chairman, when the total disputed amount of 6(tax including surcharge if any and penalty) involved in a case exceeds rupees five thousand but does not exceed rupees fifty thousand ;

(iii) by a bench consisting of single member as constituted by the Chairman when the total disputed amount of 6(tax including

surcharge if any and penalty) involved in a case does not exceed rupees five thousand ;

(b) Where an appeal or application is heard by 5(three members) of the Tribunal and the members are divided in opinion on any point or points, such point or points, shall be decided in accordance with the opinion of the majority ;

(c) Where an appeal or application is heard by a bench consisting of two members, and the members are divided in opinion on any point or points, such point or points shall be referred to the Tribunal consisting of 5(three members)

(3) Same as was during the period from 2.12.1957 to 11.8.1983.
Position from 2.12.1957 to 11.8.1983

13. Taxing authorities:-

(1) The State Government may appoint any person to be the Commissioner of Sales Tax, Orissa and he shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act.

(2) A person who is or has been a member of the superior judicial service or is eligible for appointment to such service shall be appointed by the State Government to be the Sales Tax Tribunal for the purpose of exercising such judicial powers as are or may be conferred by or under the provisions this Act.

2Provided that the State Government may at any time as the occasion may require appoint one or more persons possessing the aforesaid qualification to be the Additional Sales Tax Tribunal or Additional Sales Tax Tribunals for disposing of such matter as may be transferred to them by the Sales Tax Tribunal;

2Provided further that the Sales Tax Tribunal may, for reasons to be recorded in writing, withdraw any case from the file of any Additional Sales Tax Tribunal and may either dispose of the same or transfer it to another Additional Sales Tax Tribunal for disposal

(3) The State Government may appoint such other persons under any prescribed designation including 3(an Additional Commissioner

and a Deputy Commissioner) to assist the Commissioner and they shall exercise such powers and perform such duties as may be conferred or imposed by or under the provisions of this Act 4 (within such local area as may be assigned to them by the Commissioner).

Sub-section (2) was earlier in the form of Section 3-B which was as follows, as inserted by Section 3 of Act 1 of 1955 with effect from 1.2.1955 and repealed by Section 5 of Act 20 of 1957 with effect from 3.9.1957.

Position from 1.2.1955 to 2.9.1957.

3-B Constitution of a Tribunal and their powers and functions.

(1) The State Government may constitute a Tribunal to be appointed by them to exercise the powers, perform the functions and discharge the duties conferred and imposed on the tribunal by or under this Act.

(2) The Tribunal shall consist of three members as follows :-

(i) a person who has been a 5 (Member of the Superior Judicial Service) for a period not less than five years-----Chairman

(ii) a person who is a member of the Orissa Finance Service and has held the post of a Collector of Sales Tax or who is a retired member of the Indian Income Tax Service and had immediately before retirement held a post not below the rank of an Assistant Commissioner of Income TaxMember

(iii) a person who has been a member of the Indian Administrative Service for period not less than ten years; provided that the State Government shall have powers to relax the period in the case of an officer promoted from the Orissa Administrative Service.....Member.

(3) A question raised before the Tribunal shall be determined by a majority and the decision of the majority shall be the decision of the Tribunal :

Provided that any two members of the Tribunal shall be competent to dispose of its business and if in any event the opinions of the two members differ the matter shall be heard and disposed of by all the three members sitting together :

Provided further that the proceedings of the Tribunal shall not be deemed to be invalid merely by reason of a temporary vacancy casual by the death, retirement or removal of any member.

(4) Any vacancy in the membership of the Tribunal may be filled up by appointment under a notification of the State Government.

(5) The Tribunal may, with the previous sanction of the State Government make regulations consistent with the provisions of this Act and the rules made there under, for regulating its procedure and the disposal of its business.

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

(7) All members of the tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Position from 1.8.1947 to 1.12.1957

3. Taxing authorities-

(1) The State Government may appoint any person to be a Collector of Sales Tax , and such other persons under any prescribed designations to assist him as it thinks fit ;

(2) Person appointed under sub-section (1) shall, within such areas as the state Government may specify exercise such powers as may be conferred and perform such duties as may be imposed, by or under this Act.

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

3A. Powers And Functions Of The Commissioner :-

Without prejudice to any other functions that the Commissioner may perform under the provisions of this Act he shall also exercise the following powers and discharge the following functions :-

(i) to superintend and control all persons employed in the executive administration of Sales Tax ;

(ii) subject to the provisions of this Act and the Rules made there under, to make rules of procedure and conduct of administration for the guidance of all persons subordinate to him ;

(iii) to call for any record from any subordinate officer and also to call for any papers in connection with any assessment; and

(iv) to inspect the records and to superintend the work of officers subordinate to him and 2(their offices).

3B. Goods Liable To Purchase Tax :-

The State Government may from time to time by notification, declare any goods or class of goods to be liable to tax on turnover of purchases ;

Provided that no tax shall be payable on the sales of such goods or class of goods declared under this section.

3C. Section 3C :-

3D. Section 3D :-

4. Incidence To Taxation :-

(1) Subject to the provisions of Section 3-B,5,6,7 and 8 with effect from such date as the State Government may, by notification in the Gazette, appoint, being not earlier than 30 days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the date of commencement of the¹[Orissa Sales Tax (Amendment) Act,1991] exceeded ²[the limit specified in sub-section (7)] shall be liable to pay tax under this Act on sales and purchases effected after the date so notified.)

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act on sales and purchases with effect from the month immediately following a period not exceeding 12 months during which his gross turnover exceeded ²[the limit specified in sub-section (7)].

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed 2[the limit specified in sub-section (7)] and such further period after the date of the said expiry as may be prescribed and his liability to pay tax under this Act shall cease on the expiry of the prescribed period ;

Provided that in calculating the period of three consecutive years, the part of a year during which a dealer became first or again liable shall be excluded.

(4) Every dealer who has ceased to be liable to pay tax under sub-section (3) shall again be liable to pay tax under this Act with effect from the month immediately following a period not exceeding twelve months during which his gross turnover again exceeds 2[the limit specified in sub-section (7)].

(5) Where a dealer liable to pay tax under this Act starts a new business, partnership, firm or concern, whether by changing the constitution, style or the name of the previous business, partnership, firm or concern or otherwise either singly or jointly with any other person, such newly started business, partnership, firm or concern shall notwithstanding anything contained in this section but always subject to the other provision of this Act, be liable to pay tax on sales and purchases from the date of commencement of the said business, partnership, firm or concern, as the case may be .

(6) A dealer, who is not liable to pay tax under the foregoing sub-sections shall nevertheless be liable to pay tax on sales or purchases, if such dealer is liable to pay tax under the Central Sales Tax Act,1956 or is registered as a dealer under the said Act.

3(7) For the purpose of this section, the limit shall be -
in relation to a dealer who is an importer - Rs.20,000 ;

(b) in relation to a dealer who manufactures any goods (other than such goods as the State Government may, by notification, specify from time to time in this behalf) - Rs.1,00,000 ;

(c) in relation to a dealer engaged in the execution of works

contract and in execution thereof supplies goods (whether as goods or in some other forms)Rs.1,00,000 ; and

(d) in relation to any other dealer not covered by clauses (a),(b) and (c) - Rs.2,00,000 .

Provided that nothing in this section shall apply in respect of a casual dealer.

Section 4 has assumed the above form since 1.7.81 with Act 21 of 1981. The monetary limit prescribed under sub-section (1) for determining the liability of the dealer has been revised from time to time. With such revision effected by Amendment Act 15 of 1968, 21 of 1981, 11 of 1990 and 21 of 1991 a provision for removal of doubts has been made as followed by Section 16,5,7 and 8 respectively "For the removal of doubts it is hereby declared that the liability of any dealer to pay tax under the principal Act in respect of any period prior to the date appointed by notification under sub-section (1) of Section 4 of the Principal Act as amended by this Act shall not in any way be affected by any amendment made under this Act."

Position from 1.12.1958 to 30.6.1981

4. Incidence of Taxation -

1(1) Subject to the provisions of sections 3B,5,6,7 and 8 with effect from such date, as the State Government may, by notification, in the Gazette appoint, being not earlier than thirty days after the date of the said notification, every dealer who gross turnover during the year immediately preceding the date of commencement of 2[Orissa Sales Tax (Amendment) Act,1968] exceeds 3(Rs.25,000 shall be liable to pay tax under this Act on sales and purchases effected after the date so notified.

1(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act on sales and purchases with effect from the 4(month) immediately following a period not exceeding twelve months during which his gross turnover exceeded 2(Rs.25,000).

1(3) Every dealer who has become liable to pay tax under this Act

shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed 2(Rs.25,000) and such further period after the date of the said expiry as may be prescribed and his liability to pay tax under this Act shall cease on the expiry of the prescribed period.

Provided that in calculating the period of three consecutive years, the part of a year during which a dealer became first or again liable shall be excluded.

(4) Every dealer who has ceased to be liable to pay tax under subsection (3) shall again be liable to pay tax under this Act with effect from the 4(month) immediately following a period not exceeding twelve months during which his gross turnover again exceeds 3(Rs.25,000).

(5) Where a dealer starts a new business partnership, firm or concern, whether by changing the constitution, style or the name of the previous business, partnership, firm or concern or otherwise either single or jointly with any other person, such newly started business, partnership, firm or concern shall, notwithstanding anything contained in this section but always subject to the other provisions of this Act be liable to pay tax on sales 4(and purchases)5(xx xx xx xx) from the date of commencement of the said business. Partnership firm or concern, as the case may be

7(6) A dealer, who is not liable to pay tax under the foregoing subsections shall nevertheless be liable to pay tax on sales or purchases, if such dealer is liable to pay tax under the Central Sales Tax Act,1956 or is registered as a dealer under the said Act.

8[Provided that nothing in this section shall apply in respect of a casual dealer .]

Position from 21.12.1950 to 30.11.1958.

14. Incident of Taxation

(1) Subject to the provisions of sections 5,6,7 and 8 and with effect from such date, as the State Government may, by notification, in the Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover on sales which have taken place in Orissa during the year immediately

preceding the commencement of this Act exceeded Rs.10,000 shall be liable to pay tax under the Act on sales effected after the date so notified.

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the 2(Commissioner) to have been entered into by the dealer concerned on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply, shall be liable to pay tax under this Act, on sales which have taken place in Orissa with effect from 3(the quarter immediately following a period not exceeding twelve months) during which his gross turnover on sales which have taken place in Orissa first exceeded Rs.10,000.

(3) Every dealer who has become liable to pay tax under this Act, shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover on sales which have taken place in Orissa, has failed to exceed Rs.10,000 and such further period after the date of the said expiry as may be prescribed and his liability to pay tax under this Act shall cease on the expiry of the prescribed period.

Provided that every dealer who has been liable to pay tax and whose gross turnover on sale which have taken place in Orissa did not exceed Rs.10,000 in the year 1949-50, shall cease to be liable to pay tax from such date as may be notified by the State Government.

4Provided further that in calculating a period of three consecutive years, the part of a year during which a dealer became first or again liable shall be excluded.

(4) Every dealer who has ceased to be liable to pay tax under sub-section (3) shall again be liable to pay tax under this Act, with effect from 3(the quarter immediately following a period not exceeding twelve months during which his gross turnover on sales which have taken place in Orissa again exceeds Rs.10,000.

4(5) Where a registered dealer starts a new business, partnership, firm or concern, whether by changing the constitution, style or the name of the previous business, partnership, firm or concern or otherwise either single or jointly with any other person, such newly

started business, partnership, firm or concern shall, notwithstanding anything contained in this section, but always subject to the other provisions of this Act be liable to pay tax on sales which have taken place in Orissa from the date of commencement of the said business, partnership, firm or concern, as the case may be.

Position from 1.8.1947 to 20.12.1950.

4. Incidence of taxation -

(1) Subject to the provisions of sections 5,6,7 and 8 and with effect from such date as the State Government may by notification in the Gazette appoint being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs.5,000 shall be liable to pay tax under the Act on sales effected after the date so notified.

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Collector to have been entered into by the dealer concerned on or before the date so notified .

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover first exceeded Rs.5,000 .

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover has failed to exceed Rs.5,000 and such further period after the date of such expiry as may be prescribed and on the expiry of this later period his liability to pay tax shall cease.

(4) Every dealer who liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover again exceeds Rs.5,000 .

4A. Incidence Of Taxation On Casual Dealer :-

Subject to the provision of sections 3-B,5,6,7 and 8 a casual dealer shall, irrespective of the amount of his gross turnover be liable to pay tax under this Act on the sales and purchases made by him.

5. Rate Of Tax :-

(1) The tax payable by a dealer under this Act shall be levied on his taxable turnover at such rate, not exceeding 2(twenty five percent) and subject to such conditions as the State Government may from time to time, by notification specify;

Provided that the State Government may direct that in such circumstances, and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of the tax assessable on his taxable turnover, a sum fixed in such manner as may be prescribed in such a case the tax shall be deemed to have been compounded ;

Provided further that a dealer, who is subject to payment of a sum fixed as aforesaid, may, by a written application to the prescribed authority made within the prescribed period opt for being assessed in the usual manner under the provisions of this Act in respect of the year in which such option is exercised.

Provided further that the tax payable in respect of goods which are declared under Section 14 of the Central Sales Tax Act,74 of 1956 as goods of special importance in Inter-State trade or commerce shall be at a rate not exceeding that specified under Section 15 of the Central Sales Tax Act 1956.

Provided also that the sale of containers of taxable goods when sold with such goods but not charged separately, shall be subject to payment of tax at the same rate as the goods contained therein.

2(Provided further that where a registered dealer purchases goods of the class or classes specified in his certificate of registration as being intended for use³[within the State of Orissa] by him in the manufacture or processing of goods for sale or in mining or in generation or distribution of electricity or any other form of power

at concessional rate of tax or free or tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose 3[or outside the State of Orissa], he shall pay the difference in tax or the tax, as the case may be, payable had he not furnished the declaration.

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

(a) his turnover during that period on -

(i) the sale of any goods notified from time to time as tax free under Section 6 and of the packing materials, if any in respect of such goods;

(ii) sales to a registered dealer of goods specified in the purchasing dealers certificate of registration for resale by him in Orissa in a manner that such resale shall be subject to levy of tax under this Act, and on sales to a registered dealer of containers or other materials for the packing of such goods.

(Provided that for the purpose of ascertaining the deductions under this item the dealer selling the goods shall furnish to the prescribed authority in the prescribed manner, a declaration in the prescribed Form obtained from the prescribed authority within the prescribed time or within such further time as that authority may after sufficient cause permit .

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer free of tax after furnishing a declaration (under the preceding proviso) but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer .

1[Explanation (I) - In case of series of sales when the State Government, by notification declares sales of any specified goods to be taxed at the point at which the first of such sales is effected by a dealer liable to pay tax under this Act, the price of the goods so declared shall be included in his taxable turnover notwithstanding

that the goods so specified are sold to a registered dealer in whose certificate of registration the goods so specified are included.

Explanation (II)- In respect of goods where tax is levied at the first point of sales a dealer whose sells such goods at a subsequent point shall not be allowed to claim deduction of the sale price of such goods from his gross turnover unless he furnishes a declaration to the effect in the prescribed manner, in the prescribed form (x x x x) to be prescribed authority within the prescribed time or such further time as the authority may permit.

(iii) The cost of outward freight or of delivery or the cost of installation for the purpose of sale or supply of goods by the dealer when such cost is separately charged.

(iv) Such other sales as may be prescribed; and Any amount by way of tax realized by the dealer.

(c) Any collections for charitable purpose separately made as bitty or Dharmada or otherwise in aid of such institutions as are notified in this behalf by the District Collectors or notified by the Central Board of Revenue, Government of India for purposes of Section 15-B of the Indian Income Tax Act, 1922 provided that no amount has been collected as tax on such collections and provided further that such collections have actually been made over to the proper authorities of such institutions and receipts thereof have been obtained ;

(d)(i) Purchases of goods declared by the State Government under Section 3-B from a registered dealer who has paid or is liable to pay tax in respect of those goods under this Act.

(ii) Such other purchases as may be prescribed.

1[(AA) Notwithstanding anything contained in sub-section (2)(A) "Taxable turnover" in respect of:-

(i) Works contract shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour charges and service charges incurred for the execution of this contract.

(ii) "delivery of goods on hire purchase or any system of payment by installments" shall be deemed to be the hire purchase price or

total sum payable by the person for the purchase of goods, irrespective of the payment of the price in periodical installments].

(B) For the purpose of ascertaining the deductions, under this subsection, the same shall be proved in the prescribed manner.

The Section has assumed the present form with effect from 12.8.1983 with Act 23 of 1983 . Position prior to this date was as follows :-

Position from 1.6.1976 to 11.8.1983

5. Rate of tax -

2(1) The Tax payable by a dealer under this Act shall be levied on his taxable turnover at such rate not exceeding 3(sixteen percent) and subject to such conditions as the State Government may, from time to time, by notification specify ;

3(Provided that the State Government may direct that in such circumstances, and under such conditions and for such period as may be prescribed, a dealer shall pay in lieu of the tax assessable on his taxable turnover, a sum fixed in such manner as may be prescribed and in such a case the tax shall be deemed to have been compounded.

[Provided further that a dealer, who is subject to payment of a sum fixed as aforesaid, may, by a written application to the prescribed authority made within the prescribed period, opt for being assessed in the usual manner under the provisions of this Act in respect of the year in which such option is exercised] ;

3rd, 4th and 5th provisos are the same as was during the period from 3.9.1957 to 30.4.1976.

5[Provided further that where a registered dealer purchases goods of the class or classes specified in the certificate of registration as being intended for use by him in the manufacture or processing of goods for sale or in mining or in generation or distribution of electricity or any other form of power at concessional rate of tax of free of tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose, he shall pay the difference in tax or the tax, as the case may be, payable had he not furnished the declaration.]

(2)(A) In this Act the expression, "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom:-

(a) His turnover during the period on -

1(I) the sale of any goods notified from time to time as tax free under section 6 and of packing materials, if any, in respect of such goods.

1(ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration for resale by him in Orissa in a manner that such resale shall be subject to levy of tax under this Act, and on sales to a registered dealer of containers or other materials for the packing of such goods.

2 Provided that for the purpose of ascertaining the deductions under this item the dealer selling the goods shall furnish to the prescribed authority in the prescribed manner, a declaration in the prescribed form obtained from the prescribed authority within the prescribed time or within such further time as that authority may after sufficient cause permit.

2 Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer free of tax after furnishing a declaration 3 (under the preceding proviso) but are utilized by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

2 Explanation - In case of a series of sales when the State Government, by notification, declares sales of any specified goods to be taxed at the point at which the first of such sales is effected by a dealer liable to pay tax under this Act, the price of the goods so declared shall be included in his taxable turnover, notwithstanding that the goods so specified are sold to a registered dealer in whose certificate of registration the goods so specified are included.

4(iii) the cost of outward freight or of delivery or the cost of

installation for the purpose of sale or supply of goods by the dealer when such cost is separately charged.

4(iv) such other sales as may be prescribed, and

The remaining part of the Section is the same as was during the period from 3.9.1957 to 30.4.1976.

Position from 1.5.1976 to 31.5.1976.

5. Rate of tax -

(1) The tax payable by a dealer under this Act, shall be levied 5(at the rate of six percent) on his taxable turnover ;

Provided that the State Government may from time to time by notification and subject to such conditions as they may impose, fix a higher rate of tax 6(not exceeding thirteen percent) or any lower rate of tax payable under this Act on account of the sale of purchase of any goods or class of goods specified in such notification ;

7(xx xx xx xx)

The remaining part of the section is the same as was during the period from 3.9.1957 to 30.4.1976.

Position from 3.9.1957 to 30.4.1976.

5A. Surcharge :-

4(1) Every dealer shall, in addition to the tax payable by him under this Act, also pay a surcharge -

(a) at the rate of ten percentum of the total amount of tax so payable, if his gross turnover during any year exceeds rupees ten lakhs but does not exceed rupees one crore, and

(b) at the rate of fifteen percentum of the total amount of tax so payable, if his gross turnover during any year exceeds rupees one crore.

Provided that the aggregate of the tax and surcharge payable under this Act shall not exceed in respect of goods declared to be of special importance in inter-State trade or commerce by section 14 of the Central Sales Tax Act, 1956 , the rate fixed by section 15 of the said Act.

Provided further that in the case of an assessment year which has commenced before the commencement of the Orissa Sales Tax (Amendment) Act, 1995, turnover of the whole of such assessment year shall be taken into account for purposes of determining whether the dealer is liable to pay surcharge under this

section, but the surcharge shall be payable only in respect of that part of the turnover which relates to the period after the commencement of this Section.

(2) All provisions relating to the payment, assessment, recovery and refund of the tax under this Act shall, as far as may be, apply to the payment, assessment, recovery and refund of the surcharge.

(3) Notwithstanding anything to the contrary contained in any other provisions of this Act no dealer mentioned in sub-section (1) who is liable to pay surcharge, shall be entitled to collect the amount of the surcharge.

6. Tax Free Goods :-

The State Government may, by notification, subject to such conditions and exceptions, if any, exempt from tax the sale 6(or purchase) of any goods, or class of goods and likewise withdraw any such exemption.

7. Power Of The State Government To Exempt Dealers From Tax And To Defer Payment Of Tax :-

Notwithstanding anything to the contrary, in this Act, the State Government may subject to

Such restrictions and conditions including conditions as to registration and registration fees, by notification, exempt in whole or in part, any class of dealers from the payment of tax or allow any class dealers to defer payment of tax.

8. Powers Of The 2(State) Government To 3(Notify) Points At Which Goods May Be Taxed Or Exempted :-

Notwithstanding anything to the contrary , in this Act, the 2(State) Government may 3(notify) the points in the series of sales 4(or purchase) by successive dealers at which any goods or classes or description of goods may be tax or exempted from taxation and in doing so may direct that sales to 4(or purchase by) a person other than a registered dealer shall be exempted from taxation.

Provided that same goods shall not be taxed at more than one point in the same series of sales 4(or purchase) by successive dealers.

5[Explanation : Where in a series of sales, tax is 3(notified) to be

levied at the first point, such point, in respect of goods dispatched from outside the State of Orissa shall mean and shall always be deemed to have meant the first of such sales effected by a dealer liable under this Act after the goods are actually taken delivery of by him inside State of Orissa]

9. Registration Of Dealers :-

(1) No dealer shall, while being liable under Section 4 to pay tax under this Act, carry on business as a dealer unless he has been registered under this Act and possesses a registration certificate.

Provided that for the purposes of this sub-section, the gross turnover shall be calculated without making the deductions referred to in sub-section (2) of section 5.

(2) Every dealer required by sub-section (1) to be registered shall make an application in this behalf in such manner and to such authority as may be prescribed and every such application shall be accompanied by a fee of five rupees and two pass-port size photographs of himself and two sheets containing specimen signature of the dealer duly attested by a Gazetted Officer .

Provided that no such photograph and specimen signature shall be required to be furnished in the case of companies registered under the companies Act,1956, Societies registered or deemed to be registered under the Orissa Co-operative Societies Act,1962 or the Department of Government.

6(3) On receipt of an application, the prescribed authority shall, if he is satisfied that the applicant is a bonafide dealer and the requirements of the provisions of this Act and the rules made there under have been complied with, he shall register the applicant and grant him a certificate of registration in the prescribed form which shall specify the class or classes of goods in which the dealer carries on business at the time of grant of the certificate and such other particulars as may be prescribed.

Provided that the prescribed authority shall refuse to grant a certificate of registration, if the applicant has not paid the dues payable by him in respect of any business under the provisions of

this Act and the rules made there under ;

Provided further that the prescribed authority may, after giving the applicant a reasonable opportunity of being heard, refuse to grant a certificate of registration to the applicant, if -

(i) any person associated with the business for which the application is made has not paid the dues payable by him in respect of any business under the provisions of this Act and the rules made there under; or

(ii) any earlier certificate of registration granted to the applicant or any person associated with the business for which the application is made, has been cancelled under the provisions of this Act and the circumstances and reasons, for which such certificate was cancelled, continue to exist ; or

(iii) for any other good and sufficient reasons to be recorded in writing.

(3-a) The registering authority may for proper realisation of tax payable under this Act or for proper custody and use of forms referred to in clause (A) of sub-section (2) of Section 5, from time to time, demand from a registered dealer or from a dealer who has applied for registration under this Act, reasonable security to be paid in the prescribed manner and if the security so demanded is not paid within such time as may be specified in the order demanding security, the said authority may, notwithstanding anything contained in this Act -

(i) if the defaulter happens to be a registered dealer, cancel the certificate of registration granted to him ; or

(ii) if the defaulter is a dealer who has applied for registration refuse to grant him a certificate of registration.

Provided that no such cancellation or refusal shall be made unless the dealer has been given a reasonable opportunity of being heard.

(3-b) The registering authority may, by order, forfeit the whole or any portion of the security furnished by dealer :-

(i) for realising any amount of tax or penalty payable by the dealer

; or

(ii) if the dealer is found to have misused any of the forms referred to in clause (A) of sub-section (2) of section 5 or has failed to keep them in proper custody ;

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

(3-c) The registration of a dealer upon application made under this section shall remain in force till the end of the year during which it is granted unless earlier cancelled and may be renewed thereafter from year to year, in the prescribed manner.

Provided that in the case of a dealer who has been registered prior to the date of commencement of Orissa Sales Tax (Amendment) Act, 1975, the registration shall, unless earlier cancelled, remain in force till the end of the year in which the said date falls.

(3-d) A dealer may renew his registration certificate every year by an application made in this behalf accompanied by a fee of five rupees to the prescribed authority, in the prescribed manner.

(3-e) If a registered dealer fails to make an application for renewal without any reasonable cause, within the prescribed time or having applied for it, has been refused renewal by the registering authority, the registration certificate shall be deemed to have been cancelled with effect from the date following the period for which it was valid.

(3-f) The registering authority shall ordinarily refuse renewal of registration of a dealer, who has not paid the dues payable up to the end of the quarter preceding the date of application, but it may, for reasons to be recorded in writing allow renewal of his registration.

Explanation - A dealer shall not be deemed to have made default in making payment of the dues as aforesaid if an application for stay of recovery of the dues has been duly filled by him and is pending on the date of application for renewal.

(4) The Commissioner may, from time to time, amend any

certificate of registration after considering the information furnished under section 18 or otherwise received or for any other sufficient reasons.

(5) When any dealer has been convicted or has paid composition money under section 26, in respect of any contravention of sub-section (1) the Commissioner shall register such dealer and grant him a certificate of registration and such registration shall take effect as if it has been made under sub-section (3) on the dealer's application.

(6) When -

(a) any business in respect of which a certificate has been granted under this section has been discontinued or has been entirely transferred by the owners of the business to other persons ; or

(b) the gross turnover of any such business has during each of the three consecutive years failed to exceed 1[the limit specified in sub-section (7) of Section 4] ; or

(c) there is any other sufficient reasons so to do, the Commissioner shall cancel the registration with effect from the prescribed date and on such cancellation the Commissioner may, on application in the prescribed form received within six months of the date of cancellation, refund in such manner and subject to such conditions as may be prescribed, the security, if any, paid under sub-section (3-a).

Section 9 has assumed the present form with effect from 1.8.1991 with Act 21 of 1991. The position prior to it was as follows :-

Position from 1.6.1976 to 31.7.1991.

9A. Voluntary Registration :-

(1) Any dealer whose gross turnover during a period not exceeding twelve months exceeds ten thousand rupees, may, notwithstanding that he is not liable to pay tax under section 4 , apply in the prescribed manner accompanied by a fee of five rupees to the prescribed authority for registration under this Act.

Provided that the limit regarding the amount of gross turnover as aforesaid shall not apply in the case of a company registered under the Companies Act, 1956, a Society registered under the Orissa Co-operative Societies Act, 1962 or a

Department of Government.

(2) The provisions of sub-section (2), (3), (3-a) to (3-f) and (4) and clause (a) of sub-section (6) of Section 9 shall apply in respect of such application for registration.

Provided that if the prescribed authority is satisfied that the applicant is liable to pay tax under Section 4, he shall grant him a certificate of registration under Section 9 notwithstanding the fact the application has been made under Sub-section (1) ;

Provided further that in the case of a dealer who has been registered prior to the date of commencement of the Orissa Sales Tax (Amendment) Act, 1975, the registration shall unless earlier cancelled, remain in force till the end of the year in which the said date falls.

(3) Every dealer who has been registered upon application made under this section, shall so long as his registration remains in force be liable to pay tax under this Act.

(4) Subject to the provisions of sub-section (2) a dealer registered upon application made under this section may apply in the prescribed manner, not less than three months before the end of the year, to the authority which granted him his certificate of registration for the cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made; and the said authority, unless the dealer is liable to pay tax under section 4, shall cancel the registration accordingly.

The Section 9A has assumed the present form with effect from 1.6.1976 with Act 3 of 1976 . The position prior to this date was as follows.

Position from 1.12.1958 to 31.5.1976.

9B. Collection Of Tax By Dealer :-

(1)(a) No person who is not registered dealer shall collect in respect of any sale by him any amount by way of tax under the provisions of this Act, and no registered dealer shall make any such collection except in accordance with this Act, and the rules made there under.

(b) No person shall deduct any amount by way of tax on purchase turnover from the purchase prices payable to his vendor.

(2) Notwithstanding anything contained in Section 15, any registered dealer who realizes any amount by way of tax on the sale of any goods from the purchaser shall issue a cash or credit memo, as the case may be, signed by the dealer or his servant, manager or agent, to the purchaser showing separately the price of the goods sold and the amount realized or stipulated for realisation by way of tax and shall keep a counterfoil duly signed and shall further maintain a true and correct account of all moneys realized or stipulated for realisation by him by way of tax in the prescribed manner.

2(Provided that every dealer (other than a dealer 3(required) to compound the tax) who is liable to pay tax under this Act, while selling goods valued at more than ten rupees in any one transaction shall, whether or not any amount is realized or stipulated for realisation by way of tax, issue a cash or, as the case may be, credit memo, serially numbered showing the price of the goods sold, and signed by the dealer or by his servant, manager or agent, and shall keep a counterfoil duly

signed by him or by his servant, manager or agent and shall also maintained a true and correct account of all moneys realised or stipulated for realisation in the prescribed manner.

(2-a) In cases of sale of goods where -

(i) no cash or credit memo is required to be issued under sub-section (2).

(ii) the goods are liable to tax on turnover of purchases ; and

(iii) the sale is in favour of a dealer liable to pay such tax, the purchaser shall, subject to such conditions as may be prescribed, issue a cash or credit memo, as the case may be, showing the price of the goods purchased, signed by the dealer, his servant, manager or agent and shall keep a counterfoil duly signed by such seller.

1(3)(a) Where any person -

(i) not being a registered dealer realises any amount by way of tax, or

(ii) being a registered dealer realises any amount by way of tax in excess of the amount payable by him as tax under this Act. the Commissioner may, notwithstanding anything contained in this Act, direct that such person shall pay in the prescribed manner, by way of penalty, a sum not exceeding thrice the amount so realised by such person.

(b) Where any person contravenes the provisions of clause (b) of sub-section (1), sub-section (2) and sub-section (2-a), the Commissioner may, notwithstanding anything contained in this Act, direct that such person shall pay in the prescribed manner, by way of penalty, a sum not less than rupees five and not exceeding the tax due whichever is higher in respect of the turnover of sale or purchase for which record has not been maintained.

Provided that no penalty shall be imposed under this sub-section without giving the person concerned a reasonable opportunity of being heard.

1(4) Any penalty imposed under sub-section (3) shall be without prejudice to any punishment that may be imposed under the provisions of clause (b) of sub-section (1) of section 25.

The section assumed the present form since 12.8.1983 with Act 23 of 1983. Prior to it the position was as follows.

Position from 1.7.1969 to 11.8.1983.

9C. Provisional Registration :-

(1) Any person who intends to establish a business in the State of Orissa for the purpose of manufacturing or producing goods of a value exceeding 6(1,00,000) rupees per year, may notwithstanding that he is not required to register himself under section 9 apply in the prescribed manner to the prescribed authority for provisional registration as a dealer under this Act.

(2) If the said authority, after making such enquires, as it may consider necessary is satisfied as to the bonafide intention of the person making the application, it may grant a provisional certificate of registration to such person on furnishing such security as it may consider necessary.

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

(4) A provisional certificate of registration granted under this section shall be in force for such period as maybe specified therein and the provisions of sub-section (4) of section 9 and clauses (a) and (c) of sub-section (6) of the said section shall apply to any such certificate of registration.

10. Publication Of List Of Registered Dealer :-

The 1 (Commissioner) shall as soon as may be after the commencement of this Act, publish in the prescribed manner a list of the names and addresses of registered dealers together with a description of the goods covered by their certificate of registration and thereafter shall, in like manner from time to time, publish-

(a) such particulars of any dealer who is subsequently registered or whose certificate of registration is amended or whose registration is cancelled, as soon as may be after such registration, amendment or cancellation; and

(b) a consolidated list embodying the modification in the first list published under this section.

11. Returns :-

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

(1-a) Every such return shall be accompanied by a dealer wise list (in duplicate) of sales to registered dealers in respect of which deductions under item (ii) of sub-clause (a) of clause (A) of sub-section (2) of section 5 is claimed and by proof of payment of the admitted tax or composition money, as the case may be.

2[Provided that every dealer required under sub-section (1) to submit monthly returns, shall submit a consolidated dealer-wise list of sales to the registered dealers in duplicate along with the returns due for the concluding month of each quarter].

(2) If a registered dealer having furnished a return under sub-section (1) discovers any omission or wrong statement therein, he may furnish a revised return in the prescribed manner within three months from the due date prescribed for furnishing of returns under sub-section (1).

(3) If a registered dealer fails without any reasonable cause, to furnish any return 3(except that for the month of February, within a fortnight of the due date and the return for the month of February on before the due date) the Commissioner may direct that the dealer shall, by way penalty pay a sum not exceeding one-tenth per centum of the tax due or 4(ten) rupees whichever is higher for every day after the due date during which the dealer fails to submit the required returns.

5[Explanation - A return unaccompanied by a receipt from the treasury showing full payment of the admitted tax or composition money or by a bankers cheque or Managers cheque issued by a scheduled bank or a cheque marked or certified by such bank as good for payment or by a crossed bank draft 6(or by certificate granted under sub-section (2) of section 13-AA) 7(or under sub-section (2) of section 13-AAA) covering the admitted tax or composition money, as the case may be and by dealer wise list of sales to registered dealers in duplicate as required by sub-section (1-a), in respect of the period to which the return relates, shall not be deemed to be return for the purpose of this section and in case such cheque or bank draft is dishonored for payment, the return shall not be deemed to be return for the purpose of this section].

Provided that an annual return shall not be invalid if treasury receipt showing full payment of the admitted tax or composition money, for the whose of the year or if the Bankers cheque or Managers cheque issued by a schedule Bank or a cheque marked or certified by such bank as good for payment 1(or crossed bank draft) 2(or if the certificates granted under sub-section (2) of section 13-AA) 3(or under sub-section 2 of section 13-AAA) covering such tax or money have been previously furnished with returns for part of the year.

(4) Any penalty imposed under sub-section (3) shall be without prejudice to any punishment that may be imposed under the

provision of clause (d) of sub-section (1) of section 25.

The section assumed the present form since 12.8.1983 with Act 23 of 1983. Prior to it the position was follows.

Position from 1.6.1976 to 11.8.1983.

12. Assessment Of Tax :-

(1) If the Commissioner is satisfied, without requiring the presence of a registered dealer or the production by him of any evidence, that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

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

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

(3) If a registered dealer, having furnished returns in respect of a period, fails to comply with all the terms of a notice issued under sub-section (2), the Commissioner shall assess, to the best of his judgement the amount of tax due from the dealer.

(4) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Commissioner shall after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgement, the amount of tax, if any, due from the dealer.

(4-a) If the Commissioner, while making an assessment under sub-section (2),(3) or (4) is satisfied that the dealer has knowingly produced incorrect account, documents or registers or has without sufficient cause furnished incorrect return or information affecting or intended to affect the quantum of the tax payable by him or his liability to pay tax for the period for which such assessment is made, he may direct that the dealer shall, in addition to the tax assessed under the said sub-section, pay interest at the rate of 24 (Twenty-four percent) per annum on the tax payable in respect of the taxable turnover not incorporated in the return for a period of ninety days, or for the period beginning from the date on which the return was due and ending on the date of assessment, whichever is less.

2(5) If upon information which has come to his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless, without sufficient cause, failed to get himself registered, the Commissioner may, at any time within 3 (five years) from the expiry of the year to which that period relates, call for return under sub-section (1) of section 11, and after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and may also direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed a sum not exceeding one and half times that amount.

Provided that no penalty shall be levied for the quarter during which the dealer first or again becomes liable to pay tax under this Act and for the period between the date of application for registration and the date of registration.

6. Any dealer required to furnish annual returns under section 11 shall subject to such conditions and restrictions may be prescribed be assessed in the manner laid down in the foregoing sub-sections separately for each year during which he is liable to pay tax.

Provided that the Commissioner may, subject to such rules as may be prescribed, assess the tax due from any such dealer separately for parts of the year for which returns may have been prescribed under section 11.

(7) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act.

Provided that when the Commissioner has imposed a penalty in addition to the amount assessed under this section, and where the amount due on account of tax and penalty has been paid, no criminal proceedings shall be taken against the dealer.

Provided further that no order assessing the amount of tax due from a dealer in respect of any year or part thereof shall be passed later than thirty-six months from the expiry of the year.

Provided further that the period of limitation fixed in the proviso immediately preceding shall not apply to assessment 1[(under sub-section (5) or sub-section (8)] of this section or to enhancement of assessment or order of fresh assessment made or passed under section 23.

(8) If for any reason the turnover of a dealer for any period to which this Act applies has escaped assessment or has been under assessed or, where tax has been compounded when composition is not permissible under this Act and the rule made there under the Commissioner may at any time within 2(five years) from the expiry of the year to which that period relates call for return under sub-section (1) of section 11 and may proceed to assess the amount of tax due from the dealer in the manner laid down in sub-section (5) of this section and may also direct, in case where such escapement or under assessment or composition is due to the dealer having concealed particulars of his turnover or having without sufficient cause has furnished incorrect particulars thereof, that the dealer shall pay, by way of penalty, in addition to the tax assessed under this sub-section, a sum not exceeding one and a half times of the said tax so assessed.

3(9) If the Commissioner is satisfied that any dealer has, with a view to evading or avoiding payment of tax, effected sales of any goods or class of goods to favored payers or shown in his accounts sales or purchases at prices, which are unreasonably low compared to the prevailing market price of such goods, he may at the time of assessment or, where the assessment has been completed, at any time within a period of five years from the expiry of the year to

which the sales or, as the case may be, the accounts relate, estimate the price of such goods on the basis of market price thereof prevailing at the time when such sales were effected or, as the case may be, such accounts were shown, and assess or, as the case may be, reassess the dealer to the best of his judgement, after making such enquiry as he may consider necessary and after giving the dealer a reasonable opportunity of being heard.

Explanation - For the purpose of this sub-section, where the prices shown in accounts are unreasonably low in respect of sales or purchases of any goods or class of goods, it shall be deemed that the dealer having effected sales at prevailing market prices has shown such low prices in the accounts.

3(10) Provisions of sub-section (9) shall also apply to assessments under sub-sections (2), (3), (5) (6) and (8) and enhancement of assessments made, and fresh assessment directed, under section 23.

The Section assumed the present form since 1.6.1976 with Act 3 of 1976. Prior to it the position was as follows.

Position from 1.7.1969 to 31.5.1976.

12A. Provisional Assessment Of Tax :-

The tax payable under this Act for each year may be provisionally assessed in advance during the year in monthly or other prescribed instalments on the basis of estimated or actual turnover of the dealer, and for that purpose a dealer may be required to submit a return or periodical returns of estimated or actual turnover in such manner as may be prescribed.

(2) If the assessing authority has reasons to believe that the provisional assessment for any period was made on too low a turnover or at too low a rate or on too high a turnover or at too high a rate, he may enhance or reduce, as the case may be such provisional assessment :

Provided that before making an enhancement of the provisional assessment as aforesaid the assessing authority shall, except where such enhancement is based on the turnover finally determined for the preceding year, issue a notice thereof to the dealer and make such inquiry as he considers necessary.

(3) The Tax provisionally assessed may be levied and collected in advance, during the year in monthly or other prescribed installments .]

12B. Assessment Of Tax On Casual Dealers :-

Notwithstanding anything in Section 12 and 12A, it shall be open to an assessing authority, including the officer in charge of the check post or barrier referred to in section 16-A to make a provisional or final assessment on a casual dealer on the turnover of the purchase, or the sale of the goods, effected by him, in accordance with such rules as may be made in this behalf.]

12C. Rounding Off Tax, Etc :-

The amount of tax, interest, penalty or any other sum payable by a dealer, and the amount of 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.]

13. Payment And Recovery Of Tax And Penalty :-

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

(2) Before any dealer furnishes the returns required by sub-section (1) of section 11, he shall, in the prescribed manner, pay into a Government Treasury the full amount of tax due from him under this Act according to such returns and shall furnish, along with the returns, a receipt from such treasury showing the payment of such amount 5(or a certificate granted under sub-section 2 of Section 13AA)

1(or under Sub-section (2) of section/13AAA) or 2(a Bankers cheque, Managers Cheque issued by a scheduled bank or a cheque marked or certified by such bank as good for payment 3(or a crossed bank draft) covering such amount and drawn in favour of the prescribed authority.

(3) If any registered dealer submits a revised return in accordance with sub-section (2) of section 11 and if the revised return shows a greater amount of tax to be due than was payable in accordance with the original return, it shall be accompanied by a receipt showing payment in the manner provided in sub-section (2) of the extra amount.

(4) The amount of: -

tax due where the returns are furnished without receipt showing full payment thereof; or
tax assessed under sub-sections (1),(2),(3) and (4) of section 12 or under section 12A 4(xx xx) less the sum if any, already paid by the dealer in respect of the said period or
tax assessed under sub-section (5) of sub-section (8) of section 12 together with the penalty directed to be paid under any of the said sub-sections and the penalty, if any, imposed under sub-section (3) of section 11, or

5(d) composition money payable under 5(xx xx) section 5, less the sum, if any, already paid by the dealer, or

(e) penalty directed to be paid under sub-section (3) of Section 9-B, or

6[(ee)penalty imposed under Sub-section (5) of Section 13AA] 7[or under sub-section (5) of section 13AAA or

(f) interest charged under sub-section (4-a) of section 12 shall be paid by the dealer 7(or the person, as the case may be) into a Government Treasury within thirty days from the date of service of the notice issued by the Commissioner for the purpose.

(5) If any amount is not paid by the due date in pursuance of a notice issued under sub-section (4) the Commissioner may direct that the dealer or the person, as the case may be, shall, in addition, pay by way of penalty a sum not exceeding one-half of the total amount due within thirty days from the date of service of notice upon the dealer or the person in this behalf.

Provided that in the cases of continuing default the penalty may be levied in instalments from time to time so however as not to exceed one-half of the total amount due.

Provided further that -

(a) when the dealer or person, as the case may be, has presented an appeal under sub-section (1) of section 23, the Commissioner may, on an application in that behalf filed by such dealer or person within thirty days from the date of receipt by him of the notice under sub-section (4), in his discretion, stay the recovery of the amount in respect of which such notice has been issued or any portion thereof, for such period and subject to such conditions as the Commissioner thinks fit ; or

(b) when the dealer or person, as the case may be, has presented an appeal under clause (a) of sub-section (3) of section 23, the Commissioner may, on an application in that behalf filed by such dealer or person within sixty days from the date of receipt by him of the appellate order made under sub-section (2) of the said section, in his discretion, stay the recovery of the amounts due from such dealer or person as a result of such appellate order or any portion thereof for such period and subject to such conditions as the Commissioner thinks fit.

Provided also that where as a result of an order passed in an appeal, revision of reference - the assessment with or without penalty under section 1(12 or 12A) ; or the penalty imposed under sub-section (3) of section 11 or under sub-section (3) of section 9-B; or

2(ii-a) the penalty imposed under sub-section (5) of section 13AA, or;

the interest charged under sub-section (4-a) of section 12. is annulled, the penalty imposed under this sub-section shall be refunded ; or

(b) is reduced, the penalty imposed under this sub-section shall be proportionately reduced and the excess amount shall be refunded, and all such refunds shall be made in the manner provided under section 14.

3(6) In case a dealer makes default in payment of any amount for the payment of which a notice has been issued under sub-section (4), by the date of expiry of the period allowed under that sub-section, he shall pay interest on the said amount at the rate of 4(eighteen percent) per annum from the said date for the first three months and thereafter at the rate of 5(twenty four percent) per annum;

Provided further that in case the tax or penalty, if any, is enhanced in such appeal, revision or reference, the interest on the excess amount shall be payable from the date by which the dealer is required to pay such excess amount;

Provided also that no interest under this sub-section shall be charged in respect of any amount which remained unpaid at any

time prior to the 1st day of January, 1971.

6(7) The amount which remains unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) or sub-section (5) together with interest payable under sub-section (6) shall be recoverable as an arrear of public demand, or in accordance with the provisions contained in the schedule

7(xx xx xx xx)

8(8) (i) Notwithstanding anything contained in this Act, but subject to the conditions as the State Government may by general or special order specify, where a dealer is allowed to defer payment of tax under section 7 and where a loan liability equal to the amount of any such tax payable by such dealer has been raised by the Industrial Promotion and Investment Corporation Limited, such tax shall be deemed, in the public interest, to have been paid.

(ii) The conditions to be specified under clause (i) shall include a condition that any tax so deemed to have been paid shall not be shown as payment of tax during the year in which the deferred amount of tax is actually paid.

The Section assumed the present form since 1.6.1976 with Act 3 of 1976. Position prior to it was as follows.

Position from 20.1.1964 to 30.6.1969

13A. Special Mode Of Recovery :-

(1) Notwithstanding anything contained in section 13 or any law or contract to the contrary, the Commissioner or any officer appointed under sub-section (3) of section 3 may, at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the officer issuing the notice) require -

6(a) any person from whom any money is due or may become due to a dealer who has failed to comply with a notice served under sub-section (4) or sub-section (5) of section 13 or has failed to pay any interest due from him under the Act ; or

(b) any person who holds or may subsequently hold any money for or on account of such dealer, to pay into the Government Treasury in the manner specified in the notice issued under this sub-section either forthwith or upon the money becoming due or being held, or at or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount of tax due from the dealer or penalty or both as the case may be under this Act or the whole of the money when it is equal to or less than that

amount.

(2) The officer issuing a notice under sub-section (1) may at any time, or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer after service on him of the notice issued under sub-section (1) shall, if the liability is discharged in any manner other than that required in the said notice, be personally liable to the State Government to the extent of the liability so discharged or to the extent of the liability of the dealer for tax or penalty or both, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the officer who issued the notice that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof likely to become due to the dealer or be held for or on account of the dealer, nothing contained in this section shall be deemed to require such person to pay into the Government Treasury any such money or part thereof, as the case may be .

(6) Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable to the State Government under sub-section (4) shall, if it remains unpaid, 1[be recoverable in the same manner as provided in sub-section (7) of section 13].

Provided that nothing in this section shall operate to affect any action that may have been taken or prevent any action that may be or is being taken under section 13 for recovery from the dealer direct of the amount due from him.

(7) No action shall be taken under this section in respect of any amount of tax or penalty, the date of payment of which has been extended by the Commissioner under the proviso to sub-section (4) of section 13 or the realisation of which has been stayed by an appellate authority.

13AA. Deduction Of Tax At Source From Payment To Works Contractors :-

(1) Notwithstanding anything contained in section 13 or any other law or contract to the contrary any person responsible for paying any sum to any contractor (hereinafter referred to in this section as the deducting authority) for carrying out any works-contract which involves transfer of goods, in pursuance of a contract between the contractor and -

Central Government or any State Government, or any local authority, or any authority or corporation established by or under a statute, or any company incorporated under the Companies Act, 1956 (1 of 1956) including any State or central Government undertaking, or

(e) any co-operative Society or any other Association registered under the Societies Registration Act, 1860 (21 of 1860) shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by

issue of a cheque or draft or any other mode, whichever is earlier, deduct an amount towards sales tax equal to 3(four percentum) of such sum in respect of the works-contract, if the value of the works-contract exceeds rupees one lakh.

(2) While making deduction as referred to in sub-section (1), the deducting authority shall grant a certificate to the contractor in the form prescribed and shall send a copy thereof to the Sales Tax Officer within whose jurisdiction the works-contract to executed.

(3) The amount deducted from the Bills or Invoice shall be deposited into a Government Treasury within one week from the date of deduction in such form or challan as may be prescribed.

(4) Such deposit into Government Treasury shall be adjusted by the Sales Tax Officer towards the Sales Tax liability of the contractor and would also constitute a good and sufficient discharge of the liability of the deducting authority to the contractor to the extent of the amount deposited.

(5) (a) Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract of the nature referred to in sub-section(1) involves both transfer of property in goods and labour or service and, accordingly, justifies deduction of tax on a part of the sum in respect of the works-contract or, as the case may be, justifies no deduction of tax, he shall after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate, in the manner prescribed .

Provided that nothing in the said certificate shall affect the assessment of the sales tax liability of the contractor under this Act.

(b) Where such a certificate is produced by a contractor before the deducting authority, until such certificate is cancelled by the Commissioner, the deducting authority shall either make no deduction of tax or make the deduction of tax as the case may be, in accordance with the said certificate.

(6) If any person contravenes the provisions of sub-section (1) or (2) or (3) or of clause (b) of sub-section (5), the Sales Tax Officer shall, after giving him an opportunity of being heard, by an order in writing impose on such person penalty not exceeding twice the amount required to be deducted and deposited by him into Government Treasury.

13AAA. Deduction Of Tax At Source From The Payment To 2(Dealers) :-

(1) Notwithstanding anything contained in section 13 or in any other law or contract to the contrary, any person responsible to pay any sum to any 2(dealer) for supplies made by it to the State Government shall, at the time of credit of such sum to the account of the 2(dealers) or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct the amount of sales tax from the bills or invoices.

(2) While making deduction as referred to in sub-section (1) the deducting authority shall grant a certificate to the 2(dealer) in the prescribed form and shall send a copy thereof to the Sales Tax Officer within whose jurisdiction such supply is made.

(3) The amount deducted from the bills or invoices shall be deposited into the

Government Treasury within one week from the date of such deduction in such form or challan as may be prescribed.

(4) Such deposit into the Treasury shall be adjusted by the sales Tax Officer towards the sales tax liability of the 2(dealer) and shall constitute a good and sufficient discharge of the liability of the deducting authority to the 2(dealer) to the extent of the amount deposited.

(5) If any person contravenes the provisions of sub-section (1) or sub-section (2) or sub-section (3), the Sales Tax Officer shall after giving him an opportunity of being heard, by an order in writing, impose on such person penalty not exceeding twice the amount required to be deducted and deposited by him into Government Treasury.

13B. Tax To Be First Charge On Property :-

Notwithstanding anything to the contrary contained in any law for the time being in force any amount payable by a dealer under this Act on account of tax, penalty or interest or any amount which a person is required to pay under sub-section (1) of section 13-A or for which he is personally liable to the State Government under sub-section (4) of the said section 2[or any amount which a person is required to deduct and deposit into the Government Treasury under the provisions of section 13-AA] shall be a first charge on the property of the dealer or such person, as the case may be.

13C. Period Of Limitation For Recovery Of Tax Etc :-

Notwithstanding anything contained in any law for the time being in force no proceedings for the recovery of any amount under sub-section (7) of section 13 or under sub-section (6) or section 13-A shall be initiated after the expiry of twelve years from the date of the relevant assessment.

Provided that when an appeal or application for revision or reference has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

13D. Power Of State Government To Exempt Tax In Public Interest :-

Notwithstanding anything contained in this Act, the State Government may, if it is necessary so to do in the public interest, subject to such conditions and exceptions as it may impose by notification, exempt any specified class of sales or specified sales or purchases from payment of the whole or any part of the tax payable under the provisions of this Act.

14. Refunds :-

The 5[Commissioner] shall, in the prescribed manner, refund to a

6[xx xx] dealer applying in this behalf any amount of tax, 7[penalty or interest] paid by such dealer in excess of the amount due from him under this Act, either by cash payment or 8[xx xx] by deduction of such excess from the amount of tax, 7 [penalty or interest] due in respect of any other period :

Provided that no claim to refund of any tax 7[penalty or interest] paid under this Act shall be allowed unless it is made within twenty-four months from the date on which the order of assessment 7[or order imposing penalty as the case may be] was passed 9[or from the date] of the final order passed on appeal 10[xx xx] revision or reference in respect of the 11[order earlier mentioned] whichever period is later.

1(Provided further that no claim to refund of any tax, penalty or interest paid under this Act shall be allowed in cases where there is an order for re-assessment, until the re-assessment is finalised).

14A. 2(x x x)

Position from 1.12.1958 to 11.8.1983.

14A. Refund Of Tax In Special Cases :-

Notwithstanding anything contained in this Act 4(or any other law for the time being in force) where any amount is either deposited by any person under sub-section(3) of section 9-B or paid as tax by a dealer and where such amount or any part thereof is not payable by such person or dealer, a refund of such amount or any part thereof can be claimed only by the person from whom such person or dealer has actually realised such amounts whether by way of sales tax or otherwise and the period of limitation provided in the proviso to section 14 shall apply to the aforesaid claims.

14B. Refund In Cases Of Inter-State Trade Or Commerce :-

The Commissioner may refund to such person, in such manner and subject to such conditions as may be prescribed, any amount of tax levied on sales or purchases of goods which are declared under section 14 of the Central Sales Tax Act, 1956, when such goods are subsequently sold in course of inter-State trade or commerce.

14C. Payment Of Interest On Refundable Amounts :-

Amounts refundable under section 14, if not refunded within ninety days from the date of receipt of the application in that behalf from the dealer, shall carry interest,

at the rate of eighteen percent per annum for the first ninety days and thereafter at the rate of twenty-four percent per annum, with effect from the date of expiry of the period specified above.

The section assumed the present form since 12.8.1983. Prior to it the position was follows.

Position from 14.11.1962 to 11.8.1983.

14D. Power To Withhold Refund In Certain Cases :-

Where an order giving rise to a refund is the subject matter of an appeal or further proceeding under this Act, the Commissioner may, if he is of the opinion that the grant of refund is likely to adversely affect the revenue, withhold the refund till such time as he deems proper.

15. Accounts 2 :-

(1) Every registered dealer or other dealer to whom a notice has been served to furnish returns under sub-section (1) of section 11, shall keep-

a true account of the value of goods bought and sold by him, and

(b) the books of accounts relating to his business, at the place of his business mentioned in the certificate of registration.

Provided that if the Commissioner considers that the account so kept by any dealer are not sufficiently clear so as to enable him to make a proper check of the returns referred to in that sub-section, he may require such dealer by notice in writing to keep such accounts (including records of sales) as he may, subject to anything that may be prescribed in that behalf, in writing direct.

(2) Every registered dealer other than a registered dealer who is 3(required) to compound the tax, shall, in addition to the account mentioned in sub-section (1), maintain an annual account of the stock of goods purchased and sold by him showing the opening balance and the closing balance at the beginning and close of each accounting year which he follows.

16. 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 the stock of goods of purchases, sales and deliveries of goods by, the dealer as may be necessary for the purposes of this Act.

(2) All accounts, registers and documents relating to the stocks of goods of, or purchases, sales and deliveries of goods by any dealer and all goods kept in any place of business of any dealer shall at all reasonable times be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade the payment of any tax due from him under this Act, he may, for reasons to be recorded in writing seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution.

4(4) For the purposes of sub-section (2) or (3) the Commissioner may enter and search any office, shop, godown, vessel, vehicle or any other place where he has reason to suspect that the dealer keeps or is for the time being keeping any goods, or any accounts, registers or other documents relating to his business and for this purpose he may detain or if it is in motion stop a vessel or vehicle and thereupon the driver or any other person in charge of the vessel or vehicle shall keep it stationary as long as may reasonably be necessary for the search.

4(5) The power conferred under sub-section (4) shall include the power to break open any box, almirah or other receptacle in which any accounts, registers or other documents of the dealer may be contained or to break open the door of any premises where any such accounts, registers or documents or any goods may be kept.

Provided that the powers under this sub-section shall not be exercised by a sales tax authority below the rank of Sales Tax Officer appointed under this Act or the rules made there under.

Provided further that where the owner or the other person in occupation or in charge of the premises or of the box, almirah or other receptacle, if he is present at the spot, fails or refuses to open the door or box or almirah or other receptacle, as the case

may be, the officer exercising the power shall seal the door or box or almirah or other receptacle and shall allow reasonable opportunity to the owner or other person in occupation or in charge of the premises or of the box, almirah or other receptacle to open the same. If the owner or other person in occupation or in charge of the premises or of the box, almirah or other receptacle fails or refuses to open the door of the premises, or of the box or almirah or other receptacle after availing the opportunity the officer exercising the powers shall break open the door, or the box, almirah or other receptacle and where the officer is below the rank of Asst. Commissioner of Sales Tax, he shall immediately intimate the fact of having broken open the door of the premises, or the box, almirah other receptacle and forward a list of goods and documents found inside the premises or in the box, almirah or other receptacle to the Assistant Commissioner of sales tax having jurisdiction.

1(6) The Commissioner shall have power to seize and confiscate any goods of any dealer which are found in any office, shop, go down, vehicle, vessel or any other place but not accounted for by the dealer in his accounts, registers and other document maintained in the course of his business.

Provided that before taking action for the confiscation of the goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner.

2[Provided further that where it is not reasonably practicable to take physical possession of any goods so seized under this sub-section and remove it to a safe place due to its volume, weight or other physical character or its perishable nature, the Commissioner may serve an order on the dealer or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of the Commissioner and to keep the goods in safe condition :

Provided further that where the person affected makes payment to the Commissioner, the amount of tax payable in respect of the goods and the penalty equal to the tax payable, the goods so seized shall be released

The section has assumed the present form with effect from 14.11.1962 with Act 31 of 1962 . Position prior to this date was as follows.

Position from 1.8.1947 to 13.11.1962.

16A. Establishment Of Check-Post Or Barrier And Inspection Of Goods While In Transit :-

(1) If the State Government consider it necessary that with a view to prevent or check evasion of tax under this Act, in any place or places in the State, it is necessary so to do, they may be notification direct the setting up of check-post or the creation of a barrier or both, at such place or places as may be notified.

(2) At every check-post or barrier mentioned in sub-section (1), or at any other place where so required by any officer empowered by the 4(Commissioner) in this behalf the driver or any other person in charge of a goods vehicle or boat shall stop the vehicle or boat, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer in charge of the check-post or barrier, or the officer empowered as aforesaid, to examine the contents, in the vehicle or boat and inspect, all records relating to the goods carried, which are in the possession of such driver or other person in charge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat.

5(3) The officer in charge of the check-post or barrier, or the officer empowered as aforesaid shall have power to seize and confiscate any goods which are under transport by a goods vehicle or a boat and are not covered by a way bill issued by the person who consigns the goods, in such form and containing such particulars as may be prescribed.

Provided that before taking action for the confiscation of goods the officer shall give the person affected an opportunity of being heard and make an inquiry in the manner prescribed.

Provided further that where the person affected makes payment to such officer of the amount of tax payable in respect of such goods to be assessed in the prescribed manner the goods seized as aforesaid shall be released

Provided also that no order of confiscation shall be made in respect of goods which are not liable to payment of tax.

(4) If the goods which are seized or confiscated under sub-section (3) are of a perishable nature, they shall be sold in the prescribed manner.

116AA. Regulatory Measures For Transport Of Goods Through Orissa :-

(1) When a vehicle or boat carrying goods coming from any place outside the State and bound for any other place outside the State, passes through the State, the

driver or other person in charge of such vehicle or boat shall -

Provided that where the goods carried by such vehicle or boat are, after their entry into the State, transported outside the State by any other vehicle, boat or conveyance, the onus of proving that the goods have actually been moved out of the State shall be on the owner or person-in-charge of the vehicle or boat.

Explanation- In a case where a vehicle or boat owned by a person is hired for transportation of goods by any other person the hirer of that vehicle or boat shall, for the purpose of this section, be deemed to be the owner of the vehicle or boat, as the case may be.

(2) The Officer-in-charge of any check-post or barrier or any other officer, not below the rank of a Sales Tax Officer, duly authorised by the Commissioner, may detain any vehicle or boat and keep it stationary as long as may reasonably be necessary for examination of the contents therein and the records relating to the goods under transport by such vehicle or boat, and seize the same if -

it is presumed under sub-section (1) that the goods carried by the vehicle or boat, as the case may be, has been sold in the State ; or
the driver or the other person-in-charge of the vehicle or boat, as the case maybe, failed without reasonable cause, to produce or deliver the transit pass required under sub-section (1) ; or

he has reason to believe that the goods carried by the vehicle or boat, as the case may be, has been unloaded delivered or sold within the State in contravention of the declaration furnished under sub-section (1), he may direct the driver or the other person-in-charge of the vehicle or boat, as the case may be, to pay within a specified period, by way of penalty, a sum equivalent to twenty per centum of the value of the goods under transport by such vehicle or boat, as the case may be, or rupees twenty thousand, whichever is higher, in addition to tax as otherwise payable under this Act, failing which the officer may confiscate the goods under transport in the prescribed manner to recover such penalty and tax.

Provided that - before taking any action for confiscation of the goods the officer shall give the driver or the person-in-charge of the vehicle or boat, as the case may be, an opportunity of being heard and, if necessary, may make an inquiry in the manner prescribed; and where the goods under transport are not available at the time of seizure of the vehicle or boat, as the case may be, the officer may detain the vehicle until such penalty and tax are paid.

Where the goods seized are of a perishable nature, they shall be sold in the prescribed manner.

Where any goods seized under this section are sold, the sale proceeds thereof, after deduction of the tax including penalty payable under this section and the expenses of such sale, be paid to the person from whom the goods are seized.

No order of penalty shall be made under this section in respect of goods, which are not liable to payment of tax under this Act.

116B. Restriction Of Movement Of Goods :-

(1) No person shall transport from any railway station, steamer station, airport, post office or from any other place whatsoever notified in this behalf by the State Government, any consignment of such goods, exceeding such quantity as may be

specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act.

(2) (Any prescribed authority) or officer who may be authorised by the Commissioner in this behalf, may for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub-section (1) and subject to such restrictions as may be prescribed intercept, detain and search any road vehicle or river craft or any load carried by persons.

416C. Penalties For Contravention Of Provisions Of Sections 16-A And 16-B :-

(1) If any person, being the driver or the person in charge of a goods vehicle or boat contravenes the provisions of section 16-A, or transports any goods in contravention of the provisions of section 16-B, the Commissioner may, after giving such person a reasonable opportunity of being heard direct him to pay, by way of penalty, a sum not exceeding twice the amount of tax payable in respect of the goods and may for the purpose of realisation of the penalty seize such goods.

(2) Where the penalty levied under sub-section (1) is paid, the goods so seized shall be released, but, where such penalty is not paid by the person concerned within the time prescribed, the Commissioner shall confiscate the goods so seized.

(3) If the goods which are seized or confiscated under the preceding sub-sections are of a perishable nature, they shall be sold in the prescribed manner.

16D. Production And Inspection Of Accounts And Documents In Certain Cases :-

Without prejudice to the provisions contained in section 16-A and 16-B, where a transporter or a bailee or the owner or lessee of a warehouse to whom goods are delivered for transmission keeps such goods, before delivery thereof is taken from him, in any office, shop, warehouse, go down, vessel, boat, receptacle, vehicle or any other place, the Commissioner shall have the power to enter into and search such office, shop, go down, vessel, receptacle, vehicle or other place, as the case may be, and to examine the goods and inspect all records relating thereto and, in every such case, the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records shall give all facilities for such examination and inspection and shall produce the bills of sale or such other documents as may be required relating to the goods and give his name and address and the name and address of the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records, as the case may be.

Explanation I - For the purposes of this section-

(i) "transporter" means the owner or any person having possession or control of a good vehicle, who transports on account of any other person for hire or on his own account, any good from one place to another, and includes any person whose name is entered in the permit issued under the Motor Vehicles Act, 1988 as the holder thereof, the driver or any other person in-charge of such vehicle ;

(ii)"bailee" means the person to whom goods are delivered;

(iii)"lessee" means the person to whom the lease of goods is granted by the lesser;
and

(iv)"goods vehicle means a goods carriage as defined in the Motor Vehicle Act,1988.

Explanation II- For the purpose of this section, where goods are delivered to a transporter, bailee or the owner or lessee of a warehouse for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time of such delivery and terminate at the time when delivery is taken from the transporter, bailee or the owner or lessee of the warehouse, as the case may be.

(2) If the Commissioner has reason to suspect that any transporter, bailee or the owner or lessee of a warehouse is attempting to contravene the provisions of sub-section (1) or to evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the transporter, bailee or, as the case may be, the owner or lessee of the warehouse, as may be necessary, granting a receipt for the same and shall retain the same as long as may reasonably be necessary for examination thereof or for a prosecution.

(3) The power conferred under sub-section (2), shall include the power to break open any box, almirah or other receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse or to break open the doors of any premises where any such account, register or documents of any goods may be kept.

(4) The powers exercisable under sub-section (3) shall not be delegated to any officer below the rank of a Sales Tax Officer appointed under this Act or the rules made there under.

(5) The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or the owner or lessee of a warehouse, which are found in any office, shop, go down, vehicle or vessel or any other place while on transit but not accounted for by the transporter, bailee or the owner or lessee of the warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods.

Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make an enquiry in the prescribed manner.

Provided further that where the person affected makes payment to the Commissioner the amount of tax at the appropriate rate payable in respect of such goods to be assessed in the prescribed manner with a penalty equivalent to twenty per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released.

17. Delegation Of 1[Commissioners] Functions :-

Subject to such conditions and restrictions as the 2(State) Government may, by general or special-order, impose, the

1(Commissioner) may by order in writing, delegate any of his powers and duties under this Act 3(or the rule made there under) to any person appointed under section 3 to assist him.

18. Information To Be Furnished Regarding Changes Of Business :-

If any dealer to whom the provisions of sub-section (1) of section 11 apply :-

- (a) sells or otherwise disposes of his business or any part of his business or effects or comes to know of any other change in the owner-ship of the business, or
 - (b) discontinues his business or changes his place of business or opens a new place of business, or
 - (c) changes the name or nature of his business or effects any change in the classes of goods in which he carries on business,[1or
 - (d) has knowledge of or effects any change in any of the particulars in the list of immovable properties, if any, furnished in an application made under clause (a) of sub-section (2) of section 9.]
- he shall, within the prescribed time, inform the prescribed authority accordingly and if any such dealer dies, his legal representative shall, in the like manner, inform the said authority.

19. Tax Payable By Transferee Of Business :-

2(1) When the ownership of the business of a dealer liable to pay tax under this Act is entirely transferred any tax payable in respect of the business till the date of the transfer and remaining unpaid at the time of transfer, shall, without prejudice to any action that may be taken for its recovery from the transferor, be payable by the transferee as if he were a dealer liable under this Act for such tax and the transferee shall be liable to pay tax on the sales made by him on and from the date of such transfer and shall within thirty days of the transfer apply for registration under this Act unless he is already registered.

Explanation- When a dealer carries on business in the same premises substantially in the same goods in succession to a dealer liable under this Act, it shall be presumed that there has been an entire transfer of the business notwithstanding any change in the

constitution, style or name of the business unless the contrary is proved by the dealer succeeding to the business.

2(2) Subject to the provisions of sections 3-B,5,6,7 and 8 when a dealer liable to pay tax under this Act transfers the ownership of a part of his business the transferor shall be liable to pay tax in respect of the goods transferred with that part of the business.

(3) If any business carried on by a firm, Hindu undivided family or an association of persons has been discontinued or dissolved, every person who was at the time of such discontinuance or dissolution, a partner of such firm or member of the Hindu undivided family or such association, shall in respect of the turnover of the firm,. Hindu undivided family or association, be jointly and severally liable to assessment under section 12 and for the amount of tax payable and all the provisions of the Act, shall, so far as may be, be applied to such assessments.

3[Provided that where a partner of a firm retires before the dissolution of the firm, he shall notwithstanding any contract to the contrary, be jointly and severally liable to pay the tax or other amount due upto the date of his retirement and all the provisions of this Act shall, so far as may be, be applicable to him.]

The Section assumed the present form with effect from 14.11.1962 with Act 31 of 1962. Prior to it the position was follows.

Position from 1.8.1947 to 13.11.1962.

19A. Tax Of Deceased Dealer Payable By Representatives :-

(1) Where a dealer liable to pay tax under this Act dies after assessment but before payment of the tax, interest or penalty payable by him under this Act his executor, administrator or other legal representative shall be liable to pay, out of the estate of the deceased to the extent to which it is capable of meeting the charge, the tax assessed or the interest or penalty imposed as payable by such dealer.

(2) Where a dealer liable to pay tax under this Act dies without having furnished the return under section 11 or after having furnished the return but before assessment or before he is served with a notice under section 12, the Commissioner may proceed to make an assessment and determine the tax and penalty, if any, payable by the deceased; and for this purpose the Commissioner may require the executor, administrator or other legal representatives, as the case may be, of the deceased to perform all or any of the obligations which he might,

under the provisions of this Act, have required the deceased to perform and the tax and penalty, if any, thus determined shall be payable by the executor, administrator or other legal representative of the deceased out of the estate of the deceased to the extent to which it is capable of meeting the charge.

19B. Liability Of Guardian, Trustees, Etc :-

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

19C. Liability Of Court Of Wards, Etc :-

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

19D. Liability Of Cancellation Of Certificate :-

(1) Where a certificate of registration is cancelled under the provisions of this Act in any case other than that of a dissolution of a firm, association or Hindu undivided family the dealer shall be liable to pay tax on his stock of goods purchased tax-free on the strength of his certificate of registration and remaining unsold at the time of cancellation of the certificate and all the provisions of this Act shall apply accordingly.

(2) When the certificate of registration is cancelled under the provisions of this Act on dissolution of a firm, association or Hindu undivided family the tax on the stock of goods, purchased tax-free on the strength of the certificate of registration by such firm, association or Hindu undivided family and remaining unsold at the time of such dissolution, shall be levied upon and recovered jointly and severally from every person who, at the time of such dissolution, was a partner of such firm or member of such association or Hindu undivided family as if the goods have been sold and all the provisions of this Act shall apply accordingly,

20. Section 20 :-

21. Powers Of Commissioner To Take Evidence On Oath Etc

:-

(1) The Commissioner, Tribunal 2(xx xx xx xx) or any person appointed to assist the Commissioner, under sub-section (3) of section 3 shall for the purpose of this Act have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of following matters namely :-

Summoning and enforcing the attendance of any person and examining on oath or affirmation. Compelling the production of documents; and Issuing commission for the examination of witnesses

(2) Any proceedings under this Act before the Commissioner, Tribunal 2(xx xx) or any person appointed to assist the Commissioner under sub-section (3) of section 3 shall be deemed to be judicial proceedings within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal Code.

The section assumed the present form with effect from 1.2.1957 with Act 20 of 1957. Prior to it the position was as follows.

Position from 1.2.1955 to 31.1.1957

22. Bar To Certain Proceedings :-

Save as is provided in section 24 no assessment made or purporting to have been made and no order passed or purporting to have been passed under provisions of this Act and the rules made there under by the Commissioner, Tribunal 2(xx xx xx xx) or any person appointed under section 3 to assist the Commissioner shall be called in question in any Court and save as is provided in section 23 no appeal or application for revision shall lie against any such assessment or order as the case may be .

23. Appeal And Revision :-

3(1) Within thirty days from the date of receipt of the copy of -

(a) an order of assessment with or without penalty under section 12,12-A or 12-B ; or

(b) an order directing payment of interest under sub-section (4-a) of section 12 ; or

(c) an order imposing penalty under sub-section (3) of section 9-B or under sub-section (3) of section 11 any dealer or person, as the case may be, may, in the prescribed, manner appeal to the prescribed authority against such order.

4[Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of tax as the appellant may admit to be due from him has been paid.]

5Provided further that the prescribed authority may admit the appeal after the period herein before specified if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

3(2) Subject to such rules as may be made or procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may -

(a) Confirm, reduce, enhance or annul the assessment or the penalty or interest, if any, or

(b) Set aside the assessment or the penalty or interest, if any, and direct the assessing authority to pass a fresh order after such further enquiry as may be directed.

(3.) (a) Any dealer or as the case may be, the State Government dissatisfied with an appellate order made under sub-section (2) may within sixty days from the date of receipt of such order prefer a n appeal in the prescribed manner to the Tribunal 6(xx xx) against such order. Provided that an appeal under this clause may be admitted after the aforesaid period of limitation if the Tribunal 6[xx xx] is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

(b) The dealer or the State Government as the case may be on receipt of notice that an appeal has been preferred under clause (a) may notwithstanding that the said dealer or the State Government

may not have appealed against such order or any part thereof, 1[within sixty days] of the service of the notice file a memorandum of cross objections and such memorandum shall be disposed of by the Tribunal 2[xx xx] as if it were an appeal presented within time under clause (a)

(c) While disposing of an appeal under this sub-section the Tribunal 2(xx xx) shall have the same powers subject to the same conditions as are enumerated in sub-section (2) and any order passed under this sub-section shall, except as otherwise provided in section 24 be final.

(4) (a) Subject to such rules may be made and for reasons to be recorded in writing, the Commissioner may, upon application by a dealer 3 [or person] or on his own motion revise any order made under this Act or the rules made there under by any person other than the Tribunal 4[x x] appointed under sub-section (3) of section 3 to assist him:

Provided that the Commissioner shall not entertain any such application for revision if the dealer 3[or the person] filing the same having a remedy by way of appeal under sub-section (1) or sub-section (3) did not avail of such remedy or the application is not filed within the prescribed period.

5Explanation - Any provision contained elsewhere in this Act which provides for determination of any specific matter shall not debar the Commissioner from determining such matter in exercise of the powers conferred upon him under this sub-section.

(b) If the Commissioner proposes to reject an application for revision under the foregoing provision he shall record the reasons for such rejections.

6(c) Any dealer 3(or person) as the case may be, the State Government aggrieved by any order passed by the Commissioner on his own motion may, within sixty days from the date of receipt of such order, prefer an appeal -

(i)if the order was passed by the Commissioner to the High Court and

(ii)if the order was passed by any authority subordinate to the

Commissioner, to the Commissioner.

(cc) All order passed under this sub-section shall, subject to orders passed in an appeal, if any, be final.

(d) Notwithstanding anything contained in section 17, the Commissioner shall not except with the prior approval of the State Government delegate his powers under this sub-section to any other person appointed under sub-section (3) of section 3 to assist him.

(5) Any person likely to be affected prejudicially by any order made under this section shall be given a reasonable opportunity of being heard before such order is made.

(6) Any dealer 3(or person) while preferring an appeal or filing an application for revision under this section, shall deposit in the prescribed manner the prescribed fees or pay the same by way of affixture of Court fee stamps on the memorandum of appeal or application for revision, notwithstanding anything contained in the Court fees Act,1870

1[xx xx xx xx]

The section assumed the present form with effect from 1.7.1969 with Act 15 of 1968. The position prior to this date was as follows.

Position from 1.12.1957 to 30.6.1969.

23AA. Scheme For Settlement Of Tax :-

(1) Notwithstanding anything contained in this Act, a dealer who has filed or preferred appeal either under sub-section (1) or sub-section (3) of Section 23 which is pending as on 31st day of December,1998, may apply to the Commissioner within sixty days from the date of commencement of the Orissa Sales Tax (Amendment) Act,1999 by exercising option to compound the disputed amount of tax, penalty and interest in the prescribed form along with payment of composition amount to the extent of 60% of the total disputed dues involved in the appeal so pending .

(2) The Commissioner on receipt of the application in the prescribed form shall, after causing such enquiry as may be deemed necessary, pass an order within sixty days from the receipt of application specifying the disputed amount and the amount computed towards composition.

(3) The order specifying the amount of composition by the Commissioner shall be communicated to the concerned dealer and the Sales Tax Officer concerned.

(4) The payment of the extra amount, if any, so specified, shall be made within thirty days from the date of receipt of the order and the fact of such payment shall be intimated to the Commissioner and the Sales Tax Officer concerned along with the proof of payment thereof and a certificate thereon shall be issued by the Commissioner to the concerned dealer.

(5) Every order passed under sub-section (2) determining the sum payable by the concerned dealer shall be conclusive and no matter covered by such order shall be re-opened in any other proceeding under this Act.

(6) On satisfaction of the amount specified in the order of composition, passed under sub-section (2) the appeal or reference filed by the concerned dealer before any authority or the Tribunal under this Act shall be deemed to have been withdrawn.

(7) If the dealer has filed a writ petition or appeal or reference before the High Court or the Supreme Court against any order in respect of tax arrear, he shall file an application before such High Court or Supreme Court to withdraw such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, shall furnish proof of such withdrawal.

(8) Where an appeal has been filed by a Department of the State Government in respect of any issue relating to such tax arrear comprising tax, penalty and interest, the appellate authority shall proceed to decide the appeal irrespective of such application by the concerned dealer.

24. Statement Of Case To High Court :-

(1) Within sixty days from the (date of receipt of the copy of an order of the Tribunal (xx xx) under sub-section (3) of section 23 affecting any liability of any dealer to pay tax under this Act, such dealer or as the case may be the State Government, may by application in writing accompanied, when the application is made by any person other than the State Government, with a fee of one hundred rupees require the Tribunal (xx xx) to refer to the High Court any question of law arising out of such order and except in cases covered under sub-section (2) the Tribunal 1(xx xx) may within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

(2) If, for reasons to be recorded in writing, the Tribunal (xx xx) refuses to make such reference, the applicant may, (within sixty days from the receipt of the copy of the order of refusal), either -

withdraw his application (and if he does so, the fee paid shall be refunded), or apply to the High Court against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-

section (2) the High Court is not satisfied that such refusal was justified it may require the Tribunal (xx xx) to State a case and refer it to the High Court and on receipt of such requisition the Tribunal (xx xx) shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statement in a case referred under this section are sufficient to enable it to determine the question raised hereby, it may refer the case back to the Tribunal (xx xx) to make such additions thereto or alterations therein as the Court may direct in that behalf.

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

(6) 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.

(7) The payment of the amount, if any, of tax due in accordance with the order of the Tribunal (xx xx) in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the excess tax paid shall be refunded in accordance with the provisions of section 14.

The section assumed the present form with effect from 2.12.1957 with Act 20 of 1957 to this date the position was as follows.

Position from 1.8.1947 to 1.12.1957

Statement of case to High Court-

(1) Within sixty days from the making of any order by the tribunal under sub-section (3) to sub-section (5) of section 23, affecting any liability of any dealer to pay tax under this Act, such dealer or the commissioner as the case may be, may be application in writing accompanied, where the application is made by any person other

than the Commissioner, with 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 except in cases covered under sub-section (2) the Tribunal may within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

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

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

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

(3) If upon the receipt of an application under clause (b) of sub-section (2) the High Court is not satisfied that such refusal was justified, it may require the 2[Tribunal] to state a case and refer it to the High Court and on receipt of such requisition the 2[Tribunal] shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statement in a case referred under this section are sufficient to enable it to determine the question raised hereby, it may refer the case back to the (Tribunal) to make such additions thereto or alterations therein as the Court may direct in that behalf.

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

(6) Where a reference is made to the High Court under this section the costs including the disposal of the fee referred to in sub-section (1) shall be in the discretion of the Court.

(7) The payment of the amount, if any, of tax due in accordance with the order of the (Tribunal) in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in

consequence thereof, but if such amount is reduced as the result of such reference, the excess tax paid shall be refunded in accordance with the provisions of section 14,

25. Offences And Penalties :-

(1) Whoever-

(a) Contravenes the provisions of sub-section (1) of Section 9 ; or

(b) demands or charges from any purchaser, tax on sale of any goods in respect of which no tax is payable or tax at a rate higher than that payable under the provisions of this Act or in any manner contravenes the provision of section 9-B; or

(c) carries on business as a dealer without furnishing the security demanded under section 9 ; or

(d) fails, without sufficient cause, to submit any return as required by section 11 or submits a false return ; or

(e) fails to maintain the accounts required under section 15 ; or

(f) refuses to comply with any requirement made of him under sub-section (1) of section 16 ; or

(g) contravenes the provisions of section 16-B ; or

(h) neglects to furnish any information required by section 18, shall be punishable with simple imprisonment which may extend to six months or with fine or with both and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

(2) Whoever, being a registered dealer falsely represents when purchasing any class of goods, that goods of such class are covered by his certificate of registration, or, not being a registered dealer, falsely represents when purchasing goods that he is a registered dealer, shall be punishable with imprisonment of either description, which may extend to six months, or with fine, or with both.

Whoever has in his possession any prescribed form referred to in clause (A) of sub-section (2) of section 5, not obtained by him or by his principal or agent in accordance with the provisions of this Act, or any rules made there under shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both

Whoever willfully attempts in any manner to evade payment of tax or to defeat the imposition of tax under this Act, shall be punishable with imprisonment of either description for a term which may extend to two years or with fine or with both.

Whoever knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Whoever obstructs any officer making an inspection a search or seizure under section 16, shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

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

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

No Court shall take cognizance of any offence under this Act or under the rules made there under except with the previous sanction of the Commissioner and no Court inferior to that of a Judicial Magistrate of the first class shall try such offence.

The offence punishable under sub-section (3) and (5) shall be cognizable and non-boilable and the offence punishable under sub-sections (1),(2),(4) and (6) shall be cognizable and boilable.

The section has assumed the present form with effect from 1.6.1976 with Act 3 of 1976
Position from 1.8.1947 to 31.5.1976.

26. Compounding Of Offences :-

(1) The Commissioner may, either before or after the institution of proceedings under section 25, accept from any person charged with an offence under the said section or any rule made under this Act, by way of composition of the offence charged is one under clause (a) or clause (d) of sub-section (1) of that section, a sum not exceeding double the amount of tax which would have been payable by the dealer had he complied with the provisions of this Act 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.

27. Indemnity And Limitation For Certain Suits And Prosecution :-

(1) 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 there under.

(2) No suit shall be instituted against the (Government) and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the (State) Government in respect of any act done or purporting to be done under this Act unless the suit, prosecution or other proceeding is instituted within six months from the date of the Act complained of.

28. 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 in any record of evidence given in the course of any proceedings under this Act other than proceeding before a criminal Court shall, save as provided in sub-section (3) be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to

require any servant of the (Government) to produce before it any such statement return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

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

Nothing in this section shall apply to the disclosure of -
any of the particulars referred to in sub-section (1) for the purpose of a prosecution under the Indian Penal Code, in respect of any

statement, return, accounts, document or evidence or for the purposes of a prosecution under this Act, or

Such facts to an officer of the Government of India as may be necessary, for the purpose of enabling that Government to levy or realize any tax imposed by it under the Indian Income Tax Act, 1922, or

Such of the particulars referred to in sub-section (1) to the Sales Tax authorities of other (State and Union Territories)

As may be necessary for the purpose of enabling such authorities to levy or realise any tax.

such particulars as may be necessary to disclose to any officer of the State Government for the purpose of recovery or verification of receipts or refund of any tax under the under the Act; or

any of the particulars referred to in sub-section (1) to a Civil Court in any suit in which any officer appointed under section 3 of this Act or the State Government is a party and which relates to any matter arising out of any proceeding under this Act or the rules made there under; or

such particulars as may be necessary to disclose to any person acting in the execution of this Act or the rules made there under; or
Any such particulars, relevant to any enquiry into the conduct of an official of the Sales Tax Department, to any person appointed as Commissioner under the Public Servants (Inquiries) Act, 1850, or to an officer other-wise appointed to hold such enquiry, or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of any

such inquiry, or to a Court in connection with the prosecution arising out of any such inquiry ; or

(h)with the previous permission of the State Government any such particulars as may be required by any Commission of inquiry appointed by the Central Government or the State Government.

Under the Commissions of Inquiry Act 1952, or by any authority to which the provisions of that Act, have been made applicable by the Central Government or the State Government for the purpose of any inquiry by such commission or authority ; or

(i) such information or document, as may be required by any officer of the State Government for the purpose of investigation or inquiry into the conduct and affairs or any past or present public servant or of any agent or dealer appointed under any order issued by Government under the Essential Commodities Act,1955 or to a court in connection with any prosecution of such public servant, agent or dealer or to a Court, Tribunal or Commission of Inquiry in connection with any prosecution or inquiry in relation to such public servant agent or dealer arising out of any such investigation or inquiry.

The section assumed the present form with effect from 1.2.1955 with Act 1 of 1955 . Prior to this date the section was as follows.

28A. 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 person authorised by him in writing in this behalf being a relative or a person regularly employed by him; or

(b) by a legal practitioner or Chartered Accountant, who is not disqualified by or under sub-section (2); or

(c) by a sales tax practitioner who possesses 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)

(2) The Commissioner may by order in writing and for reasons to be recorded therein disallow for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant or Sales Tax Practitioner-

(i) who has been removed or dismissed from Government service, or

(ii) who being a legal practitioner or Chartered Accountant is found guilty of misconduct in connection with the proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs, or who being a sales tax practitioner is found guilty of such misconduct by the Commissioner.

(3) No order under sub-section (2) 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 is made under sub-section (2) may within one month of the date of communication of such order appeal to the (High Court) 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 on an application made to him in this behalf, revoke any order made against any person under sub-section(2) and there upon the said order shall cease to have effect.

29. Power To Make Rules :-

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

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

2(a) xx xx xx xx

(b) the designations under which persons may be appointed under sub-section (3) of section 3 to assist the Commissioner ;the further period after the date of expiry of three consecutive years referred to in sub-section (3) of section 4; The circumstances and conditions under which and the period for which taxes may be compounded and the manner of fixing sums on such composition under the section (1) of section 5 ; the other sales or purchase turnover in respect of which may be deducted from a dealers gross turnover in computing his taxable turnover as defined in section 5 ; the restrictions and conditions subject to which any class of dealers may be exempted from the payment of tax under section 7 ;

1(xx xx xx xx)

The authority to which applications for registration under section 9 and under section 9A shall be made ; the procedure for, and other

matters incidental to, the registration of dealers and the granting of certificates of registration and the form of such certificates under section 9 and under section 9A and the date from which cancellation of registration under sub-section (6) of that section shall take effect ; the manner in which the lists and particulars referred to in section 10 shall be published ; the returns to be finished under section 11 and dates by which and the authority to which, such returns shall be furnished ; the date by which returns for any period are to be furnished and the procedure to be followed for assessment under section 12 ; the intervals at which and the manner in which the tax under this Act shall be payable under sub-section (3) of section 9B and section 13. the manner in which refunds under section 14 shall be made ; (nn) the person to whom, the manner in which and the conditions subject to which refunds under section 14-B may be made. the accounts and forms thereof required by sub-section (2) of section 9B and section 15.

The conditions under which the production of accounts or documents or the furnishing of information may be required under sub-section (1) of section 16;

The authority to which, and the time within which information shall be furnished under section 18 ;

The manner in which and the authority to which appeals against assessment or penalty or both may be preferred under section 23 ;

(i) the procedure for and other matters including fees incidental to the disposal of appeals and applications for revision under section 23 ;

(ii) the manner of deposit and the amount of fees to be paid on an appeal or application for revision under section 23 ;the manner in which and the time within which applications shall be made, information furnished and notices served under this Act ; disposal of business by the Sales Tax Tribunal and the Additional Sales Tax Tribunal .

(3) In making any rule the State Government may direct that a breach thereof shall be punishable with fine not exceeding seven hundred and fifty rupees and when the offence is a continuing one with a daily fine not exceeding twenty five rupees during the continuance of the offence with Act 28 of 1983 The section has assumed the present form with effect from 12.8.1983 with Act 28

of 1983. Prior to this date the position was as follows.

Position from 1.8.1947 to 11.8.1983

29A. Rules And Notifications To Be Laid Before The Assembly :-

All rules made under section 29, and notifications issued

Under section 3-B, sub-section (I) of section 5 1(section 6,7,8)and 2(13-D) shall, as soon as possible after they are made or published, as the case may be, be laid before the Assembly for a total period of fourteen days which may be comprised in one or more sessions.

3(xx xx xx xx)