

**Uttar Pradesh Sales Tax (Amendment And Validation) Act,  
1978**

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## **Uttar Pradesh Sales Tax (Amendment And Validation) Act, 1978**

An Act further to amend the Uttar Pradesh Sales Tax Act, 1948, and the Court Fees Act, 1870, in its application to Uttar Pradesh and to validate certain acts and proceedings, and to provide for matters incidental thereto and connected therewith. It is hereby enacted in the Twenty-ninth Year of the Republic of India as follows:-

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

(1) This Act may be called the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1978. (2) It shall come into force on the first day of November, 1978, except clause (e) of section 2, section 9, clause (a) of section 16, section 18, section 19, clauses (a), (d) and (e) of section 20, section 21, section 27, sub-clauses (ii) and (iii) of clause (a) of section 30, section 31, clauses (b) and (c) of section 33 and section 40, which shall come into force on such date as the State Government may, by notification, appoint in this behalf and different dates may be appointed for different provisions.

### **2. Amendment Of Section 2 Of U.P. Act 15 Of 1948 :-**

In section 2 of the Uttar Pradesh Sales Tax Act, 1948, hereinafter referred to as the principal Act, - (a) after clause (a), the following clause shall be inserted, namely:- "(a-1) appellate authority means the authority to whom an appeal lies under section 9;"; (b) for clause (c), the following clause shall be substituted and be deemed to have been substituted with effect from the first day of June, 1975, except its sub-clause (iii), which shall be deemed to have been inserted on the first day of November, 1978, namely:- "(c) dealer means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration and includes - (i) a local authority, body corporate, company, any co-operative society or other society, club firm, Hindu undivided family or other association of persons which carries on such business; (ii) a factor, broker, arhti, commission agent, del credere agent, or any other mercantile agent, by whatever name called and whether of the same description as hereinbefore

mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not; (iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or nominee of the principal; (iv) a Government which, whether in the course of business or otherwise buys, sells, supplies or distributes goods, directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration; (v) every person who acts within the State as an agent of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as - (A) a mercantile agent as defined in the Sale of Goods Act, 1930; or (B) an agent for handling of goods or documents of title relating to goods; or (C) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or such payment; (vi) a firm or a company or other body corporate, the principal office or headquarters whereof is outside the State having a branch or office in the State, in respect of purchases or sales, supplies or distribution of goods through such branch or office: Provided that a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as an owner, usufructuary mortgagee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods be treated as a dealer;"; (c) after clause (c), the following clause shall be inserted, namely:- "(c-1) place of business includes - (i) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent; (ii) a shop, warehouse, godown or other place where a dealer stores his goods; (iii) an office or any other place where a dealer keeps his books of account;"; (d) after clause (d), the following clause shall be inserted, namely:- "(d-1) declared goods means goods declared by section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce;"; (e) after clause (h), the following clause shall be inserted, namely:- "(h-1) Tribunal means the Sales Tax Tribunal constituted by section 10;"; (f) in clause (i), the proviso shall be omitted and shall be deemed to have been omitted, with effect from the first day of June, 1975; (g) after clause (j), the following clause shall be inserted, namely:- "(k) vehicle includes a bicycle, a bullock-cart, a vessel or an animal

carrying load."

### **3. Amendment Of Section 3 :-**

In section 3, - (a) in sub-section (1), for the words "or section 3-AA on his turnover of sales", the words "section 3-AA or section 3-D on his turnover of sales or purchases or both, as the case may be," shall be substituted and be deemed always to have been substituted; (b) in sub-section (2), - (i) for the words "if his turnover of the assessment year", the following words shall be substituted, namely:- "if the aggregate of his turnover of - (a) purchases of goods notified under section 3-D, (b) purchases liable to tax under any other provision of this Act, (c) sales liable to tax under section 3-D, (d) sales of all goods (except those notified under section 3-D), whether such sale is made by the dealer directly or through his branch, depot or agent inside the State, in the course of inter-State trade or commerce or outside the State, of the assessment year"; (ii) explanations I and II shall be omitted.

### **4. Substitution Of Section 3-Aaaa :-**

For section 3-AAAA of the principal Act, the following sections shall be substituted and be deemed to have been substituted on April 1, 1974, namely:- "3-AAAA. Liability to purchase tax on certain transactions - Where any goods liable to tax at the point of sale to the consumer are sold to a dealer but in view of any provision of this Act no sales tax is payable by the seller and the purchasing dealer does not resell such goods within the State or in the course of inter-State trade or commerce, in the same form and condition in which he had purchased them, the purchasing dealer shall subject to the provisions of section 3, be liable to pay tax on such purchases at the rate at which tax is leviable on sale of such goods to the consumer within the State: Provided that if it is proved to the satisfaction of the assessing authority that the goods so purchased had already been subjected to tax or may be subjected to tax under section 3-AAA, no tax under this section shall be payable. Explanation. - For the purpose of this section and of section 3-AAA, the sale of - (i) ginned cotton after ginning raw cotton purchased as aforesaid, or (ii) dressed hides and skins or tanned leather after dressing or tanning raw hides and skins purchased as aforesaid, or (iii) rice, during the period commencing on September 2, 1976, and ending with April 30, 1977, after hulling paddy purchased as aforesaid, shall be deemed to be in the same form and condition. 3-B. Liability on issuing false certificates, etc - Notwithstanding anything to the contrary contained elsewhere

in this Act, and without prejudice to the provisions of sections 14 and 15-A, a dealer, who issues a false or wrong certificate or declaration, prescribed under any provision of this Act or the Rules framed thereunder, to another dealer by reason of which a tax leviable under this Act on the transaction of purchase or sale made with such other dealer ceases to be leviable or becomes leviable at a concessional rate, shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued: Provided that before taking any action under this section, the dealer concerned shall be given an opportunity of being heard. Explanation. - Where a dealer issuing a certificate or declaration discloses therein his intention to use the goods purchased by him for such purpose as will make the tax not leviable or leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong."

**5. Amendment Of Section 3-D :-**

In section 3-D of the principal Act, - (a) in sub-section (1), at the end and before explanation I, the following proviso shall be inserted, and be deemed to have been inserted on the first day of April, 1974, namely:- "Provided that such tax on the turnover of first purchase of mentha herb shall be levied and paid at the rate of seven per cent or at such rate not exceeding fifteen per cent as the State Government may, by notification, declare."; (b) sub-section (3-A) shall be omitted.

**6. Amendment Of Section 3-F :-**

In section 3-F of the principal Act, - (a) for the words "total turnover of purchases of goods notified under sub-section (1) of section 3-D, the turnover of sales liable to tax under sub-section (2) of section 3-D and of the total turnover of sales of all other goods", the words "turnover referred to in sub-section (2) of section 3, as amended by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1978" shall be substituted; (b) for the existing provisos, the following proviso shall be substituted, namely:- "Provided that no additional tax under this section shall be payable in respect of the turnover of sales or of purchases, of declared goods."; (c) the explanation shall be omitted.

**7. Amendment Of Section 4-A :-**

In section 4-A of the principal Act, for sub-section (1), the following

sub-section shall be substituted and be deemed always to have been substituted, namely:- "(1) Notwithstanding anything contained in section 3 or section 3-A, the State Government may, if it is of opinion as specified in sub-section (2), by notification declare in respect of any goods that the turnover of sales within the State, by the manufacturer thereof shall, during such period (not exceeding five years) and in such circumstances and under such conditions, as may be specified, be exempt from sales tax or be liable to tax at such reduced rate as it may fix: Provided that every notification issued under this sub-section shall be deemed to have specified the following conditions, namely:- (i) that such turnover in an assessment year does not exceed ten crores rupees; (ii) that the manufacturer had not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year: Provided further that the State Government may at any time waive the condition referred to in clause (ii) of the preceding proviso if in its opinion such discontinuation for a period exceeding six months was due to the reasons beyond the control of the manufacturer."

#### **8. Amendment Of Section 4-B :-**

In section 4-B of the principal Act, - (a) in sub-section (1), in clause (a-1), in the provisos, after the words "this clause", wherever they occur, the words "or clause (a)" shall be inserted; (b) in sub-section (5), - (i) for the words "pay as penalty an amount", the words "pay as penalty such amount as the assessing authority may fix" shall be substituted; (ii) in clauses (a) and (b), for the words, figures and letters "under section 3, section 3-A, or section 3-AA, or section 3-D, as the case may be," wherever they occur, the words "under any provision of this Act" shall be substituted; (iii) this existing provisos shall be omitted; (c) for sub-sections (6) and (7), the following sub-sections shall be substituted, namely:- "(6) Where a dealer, in contravention of the terms and conditions laid down in sub-section (2) for the grant of a recognition certificate, sells or otherwise disposes of the notified goods, for the raw material of which he has been granted such certificate, he shall be liable to pay as penalty such amount, as the assessing authority may fix, which shall be not less than the amount of tax that would have been payable under the provisions of this Act on the sale of such notified goods in the State and not more than three times the amount of such tax. (7) for determining whether a sale or purchase is in the course of inter-State trade or commerce, within the State, or in the course of export out of India,

the provisions of sections 3, 4 and 5 of the Central Sales Tax Act, 1956, shall respectively apply. (8) No penalty under this section shall be imposed unless the dealer has been given a reasonable opportunity of being heard. (9) No prosecution under section 14 shall be instituted, and no penalty under section 15-A shall be imposed in respect of the same facts on which a penalty has been imposed under this section."

**9. Amendment Of Section 6 :-**

In section 6 of the principal Act, in sub-section (1), after the words "appellate or revising authority", where they occur for the first time, the words "or the Tribunal" shall be inserted and after those words where they occur for the second time, the words "or the Tribunal, as the case may be" shall be inserted.

**10. Amendment Of Section 7 :-**

In section 7 of the principal Act, after sub-section (1-C), the following sub-section shall be inserted, namely:- "(1-D) If the goods sold by a dealer are returned within six months of the date of sale and assessment for the year to which such sale relates, is, as yet to be made, he may, within thirty days of the expiry of the month in which such goods are returned, submit for that purpose only a revised return for the period during which such sale was made."

**11. Amendment Of Section 7-A :-**

In section 7-A of the principal Act, in sub-section (1), the words "or sub-section (3-A) of section 3-D, as the case may be," shall be omitted.

**12. Amendment Of Section 7-C :-**

In section 7-C of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted and be deemed to have been substituted on the first day of March, 1973, namely:- "Provided that - (i) in respect of any liability of the deceased, his executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hand; (ii) any proceedings including the proceeding for recovery may be continued from the stage at which it was pending at the time of the death of the dealer."

**13. Amendment Of Section 8 :-**

In section 8 of the principal Act, - (a) in sub-section (1-B), for the words "or from the date of the order of enhancement, as the case

may be, simple interest on the unpaid amount", the words "simple interest on the unpaid amount calculated from the date of such expiry" shall be substituted and be deemed always to have been substituted; (b) in sub-section (8), for the words "shall be recoverable as arrears of land revenue", the following words shall be inserted, namely:- "shall, notwithstanding anything contained in any other law for the time being in force and subject to any special or general order of the State Government, be recoverable as arrears of land revenue, or in the prescribed manner by the assessing authority or any other officer authorised by the State Government in that behalf and such authority or officer shall, for the purposes of such recovery, - (i) have all the powers which a civil court has under the Code of Civil Procedure, 1908, for the purpose of recovery of an amount due under a decree; (ii) have the power to require the assessing authority or such authorised officer, having jurisdiction in any other area to make such recovery if the defaulter is or has property within the area of such other assessing authority or officer, and thereupon such other assessing authority or officer shall proceed to make recovery in the prescribed manner."; (c) in sub-section (9), in clause (b), for sub-clauses (i) and (ii), the following sub-clauses shall be substituted, namely:- "(i) it shall not be necessary to serve upon the dealer a fresh notice but only the reduced amount shall be realised; (ii) if any recovery proceedings are pending before any officer or authority other than the assessing authority, the assessing authority shall intimate such reduction to such officer or authority;"; (d) after sub-section (9), the following sub-section shall be inserted and be deemed always to have been inserted, namely:- "(10) Any amount paid or deposited by, or recovered from, or refundable to a dealer under the provisions of this Act, shall first be adjusted towards the principal amount of tax, fee, penalty or other dues outstanding against him and the excess, if any, shall then be adjusted towards the interest, if any, due from him."

#### **14. Amendment Of Section 8-A :-**

In section 8-A of the principal Act, - (a) in sub-section (1), in the second proviso, for the words and figures "by the thirtieth day of June, 1978", the words and figures "by the twenty-fifth day of July, 1978" shall be substituted and be deemed always to have been substituted; (b) in sub-section (1-A), for clause (c), the following clause shall be substituted and be deemed to have been substituted on April 1, 1978, namely:- "(c) The fee payable by the

dealer for registration shall be seventy-five rupees for the first assessment year or part thereof and fifty rupees for each subsequent year, and for renewal of registration shall be fifty rupees for each assessment year: Provided that where any dealer has, before April 1, 1978, obtained registration or renewal for any period extending beyond such date, he shall be liable to pay the difference between the fee paid and the fee payable under this clause within such time as may be allowed by the assessing authority concerned, failing which his registration or renewal, as the case may be, shall be liable to be cancelled."; (c) in sub-section (1-B), the following words shall be inserted in the end, namely:- "Where the dealer has ceased to carry on business and applies for refund within thirty days from such cessation and the certificate of registration is so cancelled, the registration or renewal fee, as the case may be, for the assessment years next following the date of such cessation, if already paid, shall be refunded. Explanation. - The dissolution or reconstitution of a business firm or association of persons or partition of a joint Hindu family or transfer by a dealer of his business shall be deemed to be cessation of business within the meaning of this sub-section."

**15. Amendment Of Section 8-B :-**

In section 8-B of the principal Act, the following amendments shall be made and be deemed to have been made on the first day of April, 1978, namely:- (a) in sub-section (1), for the words "twenty-five thousand rupees", the words "thirty thousand rupees" shall be substituted; (b) in sub-section (2), for the words "rupees fifty", the words "seventy-five rupees" and for the words "rupees twenty-five", the words "fifty rupees" shall be substituted.

**16. Amendment Of Section 8-C :-**

In section 8-C of the principal Act, - (a) in sub-section (10), for the words "an application in revision", the words "an appeal" shall be substituted; (b) in sub-section (11), for the words, brackets and figures "under sub-section (4) of section 10", the words "under the order of any authority under this Act or court" shall be substituted.

**17. Amendment Of Section 9 :-**

In section 9 of the principal Act, - (a) in sub-section (1), after the provisos, the following proviso shall be inserted, namely:- "Provided also that any person other than a dealer aggrieved by any order other than an order mentioned in section 10-A, made by the assessing authority before April 27, 1978, may appeal against such

order to the appellate authority not later than fifteenth day of December, 1978."; (b) in sub-section (3), - (i) for clause (a), the following clause shall be substituted, namely:- (a) in the case of an order of assessment or penalty, - (i) confirm or annul such order; or (ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise; or (iii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or (iv) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report has been submitted or not, decide the appeal in accordance with the provisions of the preceding sub-clauses; or"; (ii) at the end, the following proviso shall be inserted, namely:- "Provided that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit, where the appellant applies for withdrawal of the same and no request for enhancement of the assessment or penalty has been made."; (c) in sub-section (3-A) as substituted by the Uttar Pradesh Taxation Laws (Amendment and Validation) Act, 1978 (See 1978 42 S.T.C. Statutes 4.), - (i) in the proviso, in clause (i), after the words "filed with the appeal under sub-section (1)", the following words shall be inserted and be deemed to have been inserted with effect from April 1, 1978, namely:- "or thereafter within sixty days, from the date of filing of the appeal or from the first day of November, 1978, whichever is later"; (ii) at the end, the following explanation shall be inserted, namely:- "Explanation. - Rejection of a similar application for stay by any authority for want of jurisdiction shall not by itself preclude the appellate authority from entertaining such application."; (d) for sub-section (4), the following sub-section shall be substituted, namely:- "(4) An order passed under this section shall, subject to the provisions of this Act, be final."; (e) after sub-section (7), the following explanation shall be inserted, namely:- "Explanation. - Nothing contained in this section or section 10, shall be construed to require the recording of reasons for refusal to waive or relax any requirement of payment of any part of the amount of tax, fee or penalty."

### **18. Substitution Of New Section For Section 10 :-**

For section 10 of the principal Act, the following section shall be substituted, namely:- "10. Sales Tax Tribunal. - (1) There shall be a Sales Tax Tribunal consisting of a President and such other members as the State Government may from time to time deem it necessary to appoint from amongst - (a) the persons who have been, or are qualified to be Judges of High Court; and (b) the persons who hold or have held a post not below the rank of Deputy Commissioner of Sales Tax: Provided that where the Tribunal consists of one or more persons who have been Judges of a High Court then he or one of them shall be appointed the President. (2) Any person aggrieved by an order passed by an appellate authority under section 9 or the revising authority under section 10-B or by a decision given by the Commissioner of Sales Tax under section 35 may, within six months from the date of service of copy of such order or decision on him, prefer an appeal to the Tribunal. (3) Section 5 of the Limitation Act, 1963, shall apply to appeals under this section. (4) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal. (5) The Tribunal may, if it has not already dismissed the appeal under sub-section (4), call for and examine the relevant records, and after giving the parties a reasonable opportunity of being heard - (a) confirm, cancel or vary such order, or (b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner of Sales Tax, as the case may be, to pass a fresh order after such further inquiry, if any, as may be specified, or (c) order such amount of tax, fee or penalty or other money as may have been realised in excess of the due amount to be refunded according to the provisions of this Act. Explanation. - The power to vary an order referred to in clause (a) includes the power to vary the order by reducing or enhancing the amount of assessment or penalty. (6) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved within thirty days from the filing of such appeal, after giving the parties a reasonable opportunity of being heard, stay recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due, under the order appealed against till the disposal of the appeal: Provided that - (i) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one-third of such disputed amount in addition to the amount required to be deposited under sub-section (1) of section 9; (ii) the Tribunal may, for special and adequate

reasons to be recorded in writing, waive or relax the requirement of the preceding clause regarding payment of the one-third of such disputed amount. (7) Where an application under section 11 is pending before the High Court, the Tribunal may, on an application in that behalf being made to it, like-wise stay recovery of such disputed amount or such refund until such date, as it thinks fit, not beyond the date of decision of the High Court under that section. (8) No order passed under this section for the stay of recovery of tax, fee or penalty shall remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of the assessing authority concerned for payment of the outstanding amount. (9) The members of the Tribunal shall sit in such benches of one, two or more members as may be constituted from time to time, and do such work of the Tribunal as may, subject to sub-section (10) and the rules, be allotted to them, by order or in accordance with the directions of the President of the Tribunal. (10) (a) An appeal against the order of appellate authority under section 9 shall be heard and disposed of - (i) by a bench of one member, where such order is passed by an Assistant Commissioner (Judicial) and the amount of tax, fee or penalty in dispute does not exceed five thousand rupees; (ii) by a bench of two members, in any other case. (b) An appeal against an order passed under section 10-B shall be heard and disposed of by a bench of two members. (c) An appeal against an order passed under section 35 shall be heard and disposed of by a bench of three members. (d) The President may, if he so thinks fit, - (i) direct an appeal to be heard and decided by a larger bench; (ii) transfer an appeal from one bench to another bench. (11) The place of sitting and procedure of, and the manner of presenting appeals and other documents to the Tribunal shall, subject to the rules, be such as the Tribunal may deem fit to adopt. (12) The decision of a case heard by a bench shall be in accordance with the opinion of the majority. Where the members are equally divided the President of the Tribunal may - (a) if he was not a member of such bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinion; or (b) form a larger bench."

**19. Insertion Of Section 10-B :-**

After section 10-A, the following section shall be inserted, namely:-  
"10-B. Revision by Commissioner of Sales Tax. - (1) The Commissioner of Sales Tax or such other officer not below the rank

of Deputy Commissioner of Sales Tax as may be authorised in this behalf by the State Government by notification may call for and examine the record relating to any order (other than an order mentioned in section 10-A) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit. (2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard. (3) No order under sub-section (1) shall be passed - (a) to revise an order, which is or has been the subject-matter of an appeal under section 9, or an order passed by the appellate authority under that section: Explanation. - Where the appeal against any order is withdrawn or is dismissed for non-payment of the fee payable under section 32 or for non-compliance of sub-section (1) of section 9, the order shall not be deemed to have been the subject-matter of an appeal under section 9; (b) before the expiration of sixty days from the date of the order in question; (c) after the expiration of four years from the date of the order in question or after the expiration of two years from the date of commencement of section 19 of the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1978, whichever is later."

## **20. Amendment Of Section 11 :-**

In section 11 of the principal Act as substituted by the Uttar Pradesh Taxation Laws (Amendment and Validation) Act, 1978 (See 1978 42 S.T.C. Statutes 4.), - (a) in sub-section (1), after the words "of section 10", the following words shall be inserted, namely:- "as it stood before its substitution by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1978, or under sub-section (4) or sub-section (5) of section 10 as substituted by the said Act or by an order passed under section 22 by the Tribunal,"; (b) for sub-section (4), the following sub-section shall be substituted, namely:- "(4) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised."; (c) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:- "(5) Every application for making a reference to the High Court under sub-section (1) or sub-section (3), as they stood immediately before the said date, pending before the revising authority or an additional revising authority on the said date, shall

stand transferred to the High Court. Every such application upon being so transferred and every application under sub-section (4), as it stood immediately before the said date, pending before the High Court on the said date, shall be deemed to be an application for revision under this section and disposed of accordingly. (6) Where the High Court has, before the said date, required the revising authority or an additional revising authority to state the case and refer it to the High Court under sub-section (4), as it stood immediately before the said date, such authority shall, as soon as may be, make reference accordingly. Every reference so made, and every reference made by such authority before the said date in compliance with the requirement of the High Court under sub-section (4), as it stood before the said date, shall be deemed to be an application for revision under this section and disposed of accordingly. (6-A) Where the revising authority or an additional revising authority has, before the said date, allowed application under sub-section (1) or sub-section (3), as they stood immediately before the said date, and such authority has not made reference before the said date, it shall, as soon as may be, make reference, to the High Court. Every such reference, and every reference already made by such authority before the said date and pending before the High Court on the said date, shall be deemed to be an application for revision under this section and disposed of accordingly."; (d) in sub-section (7), the words "of the revising authority or an additional revising authority" shall be omitted; (e) in sub-section (8), for the words "the revising authority or additional revising authority, as the case may be," and for the words "such authority", the words "the Tribunal" shall be substituted.

### **21. Amendment Of Section 12-B :-**

In section 12-B of the principal Act, for the words "before the appellate or the revising or the additional revising authority", the words "before the appellate authority or the Tribunal" shall be substituted and, in the marginal heading, the words "or revision" shall be omitted.

### **22. Amendment Of Section 13 :-**

In section 13 of the principal Act, - (a) in sub-section (2), for the words "office, shop, godown, vessel or vehicle", the words "place of business or vehicle" shall be substituted; (b) for sub-section (4), the following sub-section shall be substituted, namely:- "(4) For the purposes of this section, the officer authorised thereunder may

enter and search any place of business or vehicle, or any other building or place where he has reason to believe that the dealer keeps or is, for the time being, keeping, any books, registers, documents, accounts or goods relating to his business: Provided that no residential accommodation (not being a place of business-cum-residence) shall be entered into, inspected or searched by such officer unless specially authorised in this behalf by the Commissioner of Sales Tax in writing."; (c) in sub-section (4-A), for words "office, shop, godown, vessel" wherever they occur, the words "place of business" shall be substituted; (d) after sub-section (6), the following sub-section shall be inserted, namely:- "(7) The provisions of sections 100 and 165 of the Code of Criminal Procedure, 1973, shall mutatis mutandis, apply in relation to any entry, or search or inspection under this section as they apply in relation to any inspection or search under the said Code."

**23. Amendment Of Section 13-A :-**

In section 13-A of the principal Act, - (a) in the marginal heading, the words "and confiscate" shall be omitted; (b) in sub-section (1), for the words "office, shop, godown, vehicle, vessel" wherever they occur, the words "place of business or vehicle" shall be substituted; (c) in sub-section (1-A), the word "vessel" shall be omitted.

**24. Amendment Of Section 15-A :-**

In section 15-A of the principal Act, in sub-section (1), - (a) in clause (iv), the following proviso shall be inserted at the end, namely:- "Provided that where no security was demanded the penalty shall not exceed double the amount of registration or renewal fee payable for the assessment year during which the default was committed, if the dealer deals only in goods unconditionally exempt from tax under section 4, and fifty rupees for every month or part thereof during which the default was committed subject to a maximum of five hundred rupees per assessment year in the case of any other dealer;"; (b) in the explanation, for the words "an officer-in-charge of a check post", the words "an officer not below the rank of an Assistant Sales Tax Officer posted at the check post" shall be substituted and be deemed always to have been substituted.

**25. Amendment Of Section 18 :-**

In section 18 of the principal Act, - (a) in sub-section (1), for the words "fifteen days", the words "thirty days" shall be substituted; (b) at the end, the following explanation shall be inserted,

namely:- "Explanation. - For the purpose of this section, the turnover shall be deemed to be the aggregate of the turnovers referred to in sub-section (2) of section 3."

**26. Amendment Of Section 21 :-**

In section 21 of the principal Act, for sub-section (2), including the provisos and explanation thereto, the following sub-sections shall be substituted, namely:- "(2) Subject to the provisions of this section, no order of assessment under any provision of this Act for any assessment year shall be made after the expiration of four years from the end of such year. (3) Where the notice under sub-section (1) for any assessment year has been served within the said period of four years, the order of assessment or reassessment in pursuance thereof may be made within six months after the expiration of the said period of four years: Provided that where such notice has been served before April 1, 1978, such order may be made within one year after the expiration of the said period of four years. (4) If an order of assessment is set aside and the case is remanded for reassessment by any authority under the provisions of this Act or by a competent court, the order of reassessment may be made within one year from the date of receipt by the assessing authority of the copy of the order remanding the case, or by December 31, 1979, whichever is later. (5) If an order of assessment or reassessment for any assessment year is set aside under section 30, a fresh order of assessment or reassessment for that year may be made within six months from the date on which such earlier order was set aside. (6) Where the proceeding for assessment or reassessment for any assessment year remains stayed under the orders of any court or authority, the period commencing on the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating the stay, shall be excluded in computing the period of limitation provided in this section. (7) Where any turnover has been included by any assessing authority in the assessment or reassessment of a dealer for any assessment year and any superior authority or court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment - (i) of such dealer for any other assessment year, or (ii) of such dealer under the Central Sales Tax Act, 1956, or (iii) of any other dealer whether under this Act or under the Central Sales Tax Act, 1956, then nothing contained in this section shall apply to assessment or reassessment of such dealer or such other dealer, relating to such

other assessment year or to the Central Sales Tax Act, 1956, as the case may be."

**27. Amendment Of Section 22 :-**

In section 22 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:- "(1) The assessing, appellate or revising authority or the Tribunal may, on its own motion or on the application of the dealer or any other interested person, rectify any mistake in its order, apparent on the record within three years from the date of the order sought to be rectified: Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period: Provided further that no such rectification as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement."

**28. Amendment Of Section 29 :-**

In section 29 of the principal Act, - (a) for sub-section (2), the following sub-section shall be substituted, namely:- "(2) If the amount to be refunded in accordance with sub-section (1) is not refunded as aforesaid within three months from the date of order of refund passed by the assessing authority, or as the case may be, from the date of receipt by him of the order of refund, if such order is passed by any other competent authority or court, the dealer shall be entitled to simple interest on such amount at the rate of eighteen per cent per annum from the date of such order to the date of the refund."; (b) after sub-section (3), the following explanation shall be inserted, namely:- "Explanation I. - The date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in the manner prescribed. Explanation II. - The expression refund includes any adjustment under the proviso to sub-section (1)."

**29. Amendment Of Section 30 :-**

Section 30 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:- "(2) Where an assessment order under sub-section (1) of section 7-A is passed ex parte, the dealer may apply to the assessing authority within fifteen days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the return and

deposited the tax due according to the return within fifteen days from the last day prescribed for filing such return, it may modify or set aside such order and also the demand notice, if any, issued thereunder."

**30. Amendment Of Section 32 :-**

In section 32 of the principal Act, as substituted by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1976 (See 1976 38 S.T.C. Statutes 1.), - (a) in sub-section (1), - (i) for the words and figure "memorandum of appeal under section 9 and other applications under this Act", the words and figures "memorandum of appeal or other applications under this Act filed or moved on or after the twentieth day of May, 1976, whether the assessment, penalty or other proceedings giving rise to such appeal or application were initiated before or after the said date" shall be substituted and be deemed always to have been substituted; (ii) in clause (b), for the words and figures "on an application for revision under section 10, not being an application for stay of realisation of tax, fee or penalty", the words and figures "on a memorandum of appeal under section 10" shall be substituted; (iii) in clause (d), in sub-clause (i), for the words "any additional revising authority", the words "the Tribunal" shall be substituted; (b) in sub-section (2), for clause (b), occurring before the proviso, the following clause shall be substituted, namely:- "(b) by cheque or bank draft along with treasury challan in such number as may be prescribed, to be enclosed with the memorandum or application;"; (c) in sub-section (3), after clause (b), the following clause shall be inserted, namely:- "(c) an application under section 35, seeking a decision only as to the rate of tax applicable or the point at which the tax is payable."

**31. Amendment Of Section 35 :-**

In section 35 of the principal Act, - (a) in sub-section (3), for the words "or revising authority", the words "revising authority or the Tribunal" shall be substituted; (b) in sub-section (4), after the words "any authority under this Act", the words "or the Tribunal" shall be inserted; (c) in sub-section (5), for the words "High Court", the word "Tribunal" shall be substituted.

**32. Insertion Of New Section 36 :-**

After section 35 of the principal Act, the following section shall be inserted, namely:- "36. Power to grant instalment - (1) The Commissioner of Sales Tax may, subject to such conditions and

restrictions as he may deem fit to impose, permit and dealer or other person, against whom any amount of tax, penalty or other dues not exceeding one lakh rupees is outstanding, to deposit the same in such number of monthly instalments, not exceeding twelve, as he may consider proper in the circumstances of the case. (2) Where such dealer or other person fails to furnish adequate security to the satisfaction of the assessing authority concerned for payment of the outstanding amount within thirty days from the date of the order referred to in sub-section (1) or within such extended time as the assessing authority may allow, or fails to comply with conditions or restrictions imposed in such order shall stand vacated and thereupon fresh proceedings for realisation according to the provisions of this Act may be commenced."

### **33. Amendment Of First Schedule :-**

In the First Schedule to the principal Act, - (a) in the entry at serial number 34, in column III, after the words "or by importer", the following words shall be inserted, namely:- "Provided that where the sale is by the Forest Department to the U.P. Forest Corporation the tax shall be levied on the point of sale by such Corporation and not on the point of sale by the Department;"; (b) for the entries at serial numbers 60, 61 and 62, the following entries shall respectively be substituted columnwise as indicated below, namely:- in column I in column II in column III "60. (a) Motor trucks and motor buses. Sale to the consumer or hire-purchase (b) Motor cycles, motor cycle company financing combinations, motor scooters the purchase by the and motorettes. consumer. (c) Motor cars including jeeps. (d) All other motors vehicles. 61. Chassis and motor bodies of all Sale to the consumer shapes and designs (including or hire-purchase motor caravans and tankers) company financing whether built on chassis or the purchase by the separately. consumer. 62. Tyres and tubes, parts and accessories of motor vehicles M or I"; of all kinds. (c) after the entry at serial number 86, the following entry shall be inserted columnwise as indicated below, namely:- in column I in column II in column III "87. Soda water, lemonade and M or I"; other soft beverages. (d) in the entry at serial number 97, in column III, after the words "or by importer", the following words shall be inserted, namely:- "Provided that where the sale is by the Forest Department to the U.P. Forest Corporation the tax shall be levied on the point of sale by such Corporation and not on the point of sale by the Department;"; (e) in the entry at serial number 116, in column III,

for the existing words, the words "M or I" shall be substituted and be deemed always to have been substituted.

**34. Amendment Of Rule 25-A :-**

In rule 25-A of the Uttar Pradesh Sales Tax Rules, 1948, for sub-rule (3), the following sub-rule shall be substituted and be deemed to have been substituted on the first day of April, 1978, namely:- "

(3) The fee payable by the dealer for recognition certificate shall be one hundred rupees for the first assessment year or part thereof and fifty rupees for each subsequent year and for renewal of recognition certificate shall be fifty rupees for each assessment year."

**35. Removal Of Doubts :-**

For removal of doubts it is hereby clarified that the fee of two hundred rupees referred to in section 11 of the principal Act, as it stood immediately before April 27, 1978, is required to accompany any application referred to in such section filed on or after May 20, 1976, and before April 27, 1978, whether the assessment, penalty or other proceedings out of which such application arose was commenced before or after May 20, 1976, and where any such application accompanied by a lesser amount of fee has been filed and entertained the deficit amount may be realised in accordance with the provisions of the principal Act but the decision on such application shall not be invalid merely on the ground of non-compliance of such section as hereby clarified.

**36. Validity Of Certain Rules And Notifications :-**

The rules and the notifications modified by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1976 (See 1976 38 S.T.C. Statutes 1.), or the Uttar Pradesh Taxation Laws (Amendment and Validation) Act, 1978 (See 1978 42 S.T.C. Statutes 4.), or by this Act, shall continue in force until amended or rescinded by the State Government in exercise of its power under the relevant section of the principal Act, read with section 21 of the Uttar Pradesh General Clauses Act, 1904.

**37. Power To Make Rules Retrospectively :-**

Where any existing rule is amended or any new rule is made in consequence of amendment of any provision of the principal Act (whether by substitution, insertion or omission) by this Act or the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1976 (See 1976 38 S.T.C. Statutes 1.), or the Uttar Pradesh Taxation Laws (Amendment and Validation) Act, 1978 (See 1978 42 S.T.C.

Statutes 4.), such rule or amendment may be made effective from a date not earlier than the date of commencement of such amendment of the provision of the principal Act in consequence whereof the rule is amended or made.

**38. Validation :-**

(1) Notwithstanding any judgment, decree or order of any court or authority, anything done or any action taken before the commencement of this section, which conforms to the provisions of the principal Act, as amended by this Act, shall be deemed to be, and always to have been, valid and lawful as if the provisions of this Act were in force at all material times. (2) Where, before the commencement of this section, any court or authority has, in any proceeding, made any assessment, levy or collection of any tax or passed any order imposing any penalty or making any other demand, under the principal Act, or passed any order modifying, setting aside or quashing (wholly or in part) such assessment, levy, collection, penalty or demand and such assessment or other order becomes, in consequence of the provisions of this Act inconsistent with the provisions of the principal Act as amended by this Act, then subject to the provisions of sub-section (3), any party to the proceeding or the Commissioner of Sales Tax may, within six months from the date of such commencement, make an application to such authority or court, for a review of the assessment or order and thereupon such authority or court may review the proceedings and make such order varying or revising the order previously made, as may be necessary to give effect to the provisions of this Act. (3) The assessing, appellate, revising or additional revising authority, as the case may be, within a period of one year from the first day of November, 1978, or within the period specified in section 22 of the principal Act, whichever expires later make any rectification in any order passed by it where such rectification becomes necessary consequence of the amendment of the principal Act by this Act: Provided that no rectification, which has the effect of enhancing the assessment, penalty or other dues, shall be made unless the authority concerned has given notice to the dealer or the person concerned of his intention to do so and has allowed him a reasonable opportunity of being heard.

**39. Additional Temporary Provision For Revision Under Section 11 :-**

Any person aggrieved by an order under sub-section (1) of section 22 of the principal Act, as it stands until its substitution upon

commencement of section 27 of this Act, made by the revising or additional revising authority referred to in section 10 of the principal Act, as it stands until its substitution upon commencement of section 18 of this Act, may also apply for revision of such order in accordance with the provisions of section 11 of the principal Act.

#### **40. Transitory Provisions :-**

(1) Any application for revision under section 10 of the principal Act, as it stood before its substitution by this Act, pending immediately prior to such substitution, shall stand transferred to the Tribunal and shall be disposed of as if it were an appeal under section 10 of the principal Act, as so substituted. (2) Where such application for revision has not been filed and the period of limitation prescribed for its filing has not expired, an appeal under section 10 of the principal Act as so substituted may be filed within the period of limitation prescribed in section 10 of the principal Act, as it stood before such substitution, or within six months from the date of such substitution, whichever period expires earlier. (3) All other applications pending immediately prior to such substitution of section 10 before the revising authority or an additional revising authority referred to in section 10 of the principal Act, as it stood before such substitution, shall stand transferred to the Tribunal and disposed of in accordance with the provisions of the principal Act, as amended by this Act. (4) Any application which would lie to such revising or additional revising authority but for such substitution of section 10, may be filed before the Tribunal within the time it could be filed before such revising or additional revising authority and shall be disposed of in accordance with the provisions of the principal Act, as amended by this Act.

#### **41. Amendment Of Schedule Ii To Act No. 7 Of 1870 :-**

In Schedule II of the Court Fees Act, 1870, as amended in its application to Uttar Pradesh, in article 1 ("application or petition"), in clause (e), after sub-clauses (4), the following sub-clause shall be inserted, columnwise as indicated below, namely:- Column 2 Column 3 "(4-A) Under section 11 of the Uttar Two hundred and fifty Pradesh Sales Tax Act, 1948, rupees." for revision of an order.

#### **42. Repeal And Saving :-**

(1) The Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1978 (See 1979 43 S.T.C. Statutes 12.), is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the principal Act or the Court Fees Act, 1870, as

amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the said Acts, as amended by this Act, as if the provisions of this Act were in force at all material times. The Statement of Objects and Reasons appended to the Uttar Pradesh Sales Tax (Amendment and Validation) Bill, 1978 (Uttar Pradesh Gazette, Extraordinary, Part 3(A), dated 12th December, 1978, page 47.), runs as follows:- "Amendment in certain provisions of the U.P. Sales Tax Act, 1948, are necessary to implement the various decisions taken on the recommendations of the U.P. Sales Tax Simplification Committee. 2. The salient features of such amendments are as follows: (a) Dealers are being enabled to claim deduction in respect of goods returned within six months of the date of sale. Provision is also being made for refund of fee of registration or renewal where the business is discontinued. (b) The amount of penalty for failure to apply for registration or renewal is being reduced in certain cases; the fee for application under section 35 for determination of the question regarding the rate or point of tax on any commodity is being abolished. (c) Time-limit for disposal of remanded cases and cases reopened under section 21, is being reduced. (d) Provision is being made for reopening of the provisional assessment orders made ex parte in certain cases. (e) The rate of interest on refundable amount is being increased from 12 per cent to 18 per cent per annum. (f) For expediting the recovery of arrears it has been considered necessary to provide for collection of the dues through departmental officers also and to empower the Commissioner, Sales Tax, to permit the deposit of dues in monthly instalments. (g) Provision is being made to avoid levy of double tax on ginned cotton, dressed hides and skins or tanned leather or rice manufactured respectively from raw cotton, raw hides and skins or paddy. (h) To remove the hardships of the dealers, who, due to genuine difficulties, could not file appeal against the assessment orders, and to avoid revenue loss, the Commissioner is being given powers to revise assessments in certain cases. (i) In order to eliminate the possibility of conflicting judgments by various revising and additional revising authorities on the same point of law and to have a better assessment of the facts of the case, provision is being made for constitution of a Sales Tax Tribunal, to hear appeals against the order of appellate authority in place of the provision for revision by revising and additional revising authorities. (j) Opportunity has also been taken to make certain other amendments for removing ambiguities and for

validating certain acts. 3.To remove the doubts regarding the validity of the provision regarding fee under the U.P. Sales Tax Act for revision to the High Court, the provision from the former is being omitted and inserted in the Court Fees Act, 1870, by amending Schedule II thereof. 4.As the matter was urgent and the State Legislature was not in session, the Governor promulgated the Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1978 (See 1979 43 S.T.C. Statutes 12.), on November 13, 1978. The Bill is accordingly introduced to replace the said Ordinance.